GEORGE WRIGHT

CANADIAN

DOMESTIC LAWYER

WITH

PLAIN AND SIMPLE INSTRUCTIONS

FOR THE

MERCHANT, FARMER, AND MECHANIC,

TO ENABLE THEM TO TRANSACT THEIR BUSINESS ACCORDING TO LAW.

By JOHN WHITLEY, Esq.,

ATTORNEY-AT-LAW, TORONTO.

WITH AN APPENDIX, CONTAINING THE NEW INSOLVENT ACT, STATUTE LABOR ACT AND STAMP ACT.

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Entered according to the Act of the Provincial Parliament, in the year one thousand eight hundred and sixty-five,

BY SAMUEL VIVIAN,

Proprietor and Publisher, Stratford, C. W.

PREFACE.

THIS work is presented to the public, not as one which will altogether do away with the necessity for the advice and assistance of a lawyer,—for such a claim in its behalf would be simply ridiculous,—but merely as a guide to the farmer and merchant in the ordinary business details of every-day life.

It frequently happens that recourse is had to a lawyer for the preparation of a simple instrument, or for advice on some trivial point, which would be quite unnecessary if a book like the present were at command. For all such cases it has been especially prepared.

The father of a family does not think of calling in the aid of a doctor for every trifling indisposition to which any of his household

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may be subject; and there is as little reason why a rush should be made to a lawyer for the preparation of every little document or for advice upon every small matter which should be plain to the ordinary comprehension of every common-sense person.

The merit of absolute originality is not claimed for this work. The compiler (for he assumes no other appellation) has drawn largely from sources with which the professional man is familiar, but which are practically closed to the general public. To recapitulate the various sources whence information and assistance have been sought, would be alike tedious and superfluous.

It has not been deemed advisable to cumber this work with many *special forms*, which are serviceable only to the professional man. In every case of intricacy the reader is advised still to have recourse to his lawyer for that aid and assistance which no work of this kind could give him. Whenever the matter in hand

passes out of the category of a plain and simple ordinary every-day-matter, the reader is reminded of the old adage that "he who is his own lawyer has a fool for a client."

With these remarks, this work is submitted to the judgment of the public. If it meets their approbation, the objects of the compilation, undertaken at the instance of the publisher, will have been accomplished.

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THE

CANADIAN DOMESTIC LAWYER.

CHAPTER I.

Of Affidavits.

An affidavit is a statement, in writing, of some particular fact, sworn to by the party making the statement. Some persons entertain conscientious scruples about the taking of an oath, for any purpose: for the relief of whom the law provides that an affirmation may be made in lieu of an oath. The difference, then, between an affidavit and an affirmation, is simply this: the one is *sworn* to be true; the other is *affirmed*. The penalties for making a false affidavit, or a false affirmation, are identical.

Specific forms of affidavits, applicable to particular cases, will be found scattered throughout this work: we shall here give only general forms.

Every affidavit ought to be written in words at length: figures should not be used in the body of it. We do not mean to say that the use of figures would vitiate an affidavit; but as a matter of convenience, and for greater certainty, it is always better to use

words: many figures, hurriedly, or perhaps badly, made, being oftentimes hard to decipher.

Affidavits to be used in the courts of law, as a general rule, require to be taken before a commissioner: sometimes, however, it is sufficient to take them before a Justice of the Peace. In other cases, it must be made before a Justice, and not before a commissioner. The forms given will generally indicate before whom they must be sworn.

Affidavits to be used in a court of law are required to be written in paragraphs, each paragraph relating, as much as possible, to a distinct subject. Although the same particularity is not prescribed with reference to affidavits *not* intended to be used in a court, yet, as the practice is very convenient, the same method is recommended in every case.

In the margin of an affidavit not intended for use in court, the name of the county wherein it is sworn should be stated.

I. General Form of Affidavit.

County of
to wit:
or
United Counties of
and
to wit:

I, A. B., of
in the County of
yeoman (*or other proper designation*), make oath and say:—
First. That, &c. &c. (*Here state the matter to be sworn to, plainly and accurately. If the affidavit relates to more matters than one, then, having disposed of one matter in the first paragraph, go on to a second, as follows:*)

Second. That, &c. &c. (*and so on, with as many paragraphs as may be necessary, confining each paragraph to a distinct matter, and commencing each in a new line.*)

Sworn before me at
in the County of
this day of
A. D. 18 .
C. D.,
J. P., *or* Commissioner, &c.,
or County of [ ]

A. B.

2. General Form of Affirmation.

County of
to wit:
or
United Counties of
and
to wit:

I, A. B., of
in the County of ,
yeoman (*or other proper designation*), do solemnly and sincerely affirm and declare as follows:

First. That, &c. &c. (*as in an affidavit.*)

Affirmed before me at
in the County of
this day of
A. D. 18 .
C. D.,
J. P., *or* Commissioner, &c.,
for the County of [ ]

A. B.

The following is the form of an oath:—

3. Oath.

You swear that this affidavit, by you subscribed, is true, to the best of your knowledge and belief. So HELP YOU GOD.

The following is the form of an affirmation:—

4. Affirmation.

You do solemnly and sincerely declare and affirm, as you shall answer to Almighty God at the great day of judgment, that this affirmation, by you subscribed, is true, to the best of your knowledge and belief.

Every affidavit or affirmation must be subscribed at the foot by the party making the same; but, if unable to write, a mark may be made, thus:—

The mark of

+

A. B.

And whenever an affidavit or affirmation is made by a marksman,—that is, a person who cannot write his name,—the jurat must be in the following form:—

Sworn (*or affirmed*) before me, at in the county of this day of 18 .

And I certify that the foregoing affidavit (*or affirmation*) was read over by me (*or in my presence*) to the said A. B., who appeared perfectly to understand the same, and made his mark in my presence.

C. D.

J. P., *or* Commissioner, &c.

CHAPTER II.

Of Contracts or Agreements.

An agreement is an engagement entered into between two or more persons. In legal phraseology, it is termed a contract, which is defined by Sir W. Blackstone, the great commentator upon the laws of England, to be "an agreement upon sufficient consideration to do or not to do a particular thing." This agreement, or contract, may be either express or implied. Express contracts are either by parol, or word of mouth, which are technically called *simple contracts*, or by deed under seal, which are called *special contracts*. Simple contracts, however, may, and in some cases must, be *evidenced* by writing. A parol contract, then, is an agreement by word of mouth, upon sufficient consideration, to do or not to do a particular thing. According to English law, a *consideration* is essential in every contract: a promise without a consideration cannot be enforced. Thus, if a man promise to give me $1000 without any consideration, he is not bound to perform his promise, and I am without remedy if he should break his word.

Considerations are of two kinds,—*good* (sometimes called meritorious) and *valuable*. A good consideration is that of *blood*, or the natural love and affection which a person has to his wife or children or any of

his relatives. A valuable consideration may be either the payment of money, or the gift or conveyance of any thing valuable; or it may be the consideration of the marriage of the party himself or of any relative, or any act of one party from which the other, or any stranger at his request, express or implied, derives any advantage; or any labor, detriment, inconvenience, or risk sustained by the one party if such labor be performed, or such detriment, inconvenience, or risk be suffered, by the one party at the request, express or implied, of the other, although such other may himself derive no actual benefit. A good consideration is not of itself sufficient to support a promise, any more than the moral obligation which arises from a man's passing his word; neither will the two together make a binding contract: thus, a promise by a father to make a gift to his child will not be enforced against him. A valuable consideration is, therefore, in all cases necessary to form a valid contract.

By some statutes writing is required to most simple contracts respecting matters of importance. It should be remembered, however, that in all cases where writing is by any statute made necessary to a contract, the contract is still a *parol* one, though evidenced by the writing; but when a contract is made by deed, the *deed itself* is the contract.

The first and most important of these statutes is called the Statute of Frauds, passed in the reign of Charles II. (29 Car. II. cap. 3), which enacts, in its fourth section, that no action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own

estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized. This statute, it will be observed, does not give to writing any validity which it did not possess before. A written promise, made since this statute, without any consideration, is quite as void as it would have been before. The statute merely adds a further requisite to the validity of certain contracts, namely, that they shall, besides being good in other respects, be put into writing, otherwise they cannot be enforced. The phrase in the statute to *answer* for the debt, default, or miscarriage of another person, means to answer for a debt, default, or miscarriage for which that other remains liable. The words "any agreement that is not to be performed within the space of one year from the making thereof" mean an agreement which appears from its terms incapable of performance within a year. In order to bring an agreement within this clause of the statute, so as to render writing necessary, *both* parts of the agreement must be such as are not to be performed within a year. The clause requiring the "agreement,

or some memorandum or note thereof, to be signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized," has been liberally construed, and any insertion by the party of his name in any part of the agreement is a sufficient signing within the statute, provided the name be inserted in such a manner as to have the effect of authenticating the instrument; and it is not necessary that both parties should sign the agreement. The whole of the agreement must be contained in the writing, either expressly or by reference to some other document, but the writing is required by the statute to be signed only by the *party to be charged.* And, as a "memorandum or note" of the agreement is allowed, a writing sufficient to satisfy the statute may often be made out from letters written by the party, or from a written offer accepted without any variation before the party offering has exercised his right of retracting; and when correspondence is carried on by means of the post, an offer is held to be accepted from the moment that a letter accepting the offer is put into the post, although it may never reach its destination.

With reference to contracts for the sale of goods, it is to be observed that the necessary requisites depend partly upon the value of the goods. As to goods under the value of $40, there can be no sale without a tender or part payment of the money, or a tender or part delivery of the goods, unless the contract is to be completed at a future time. Thus, if A. should agree to pay so much for the goods, and B., the owner, should agree to take it, and the parties should then separate without anything further pass-

ing, this is no sale. But if A. should tender the money, or pay but a cent of it, or B. should tender the goods, or should deliver any, even the smallest portion of them, to A., or if the payment, or delivery, or both, should be postponed by agreement till a future day, the sale will be valid, and the property in the goods will pass from the seller to the purchaser. If, however, any act should remain to be done on the part of the seller previously to the delivery of the goods, the property will not pass to the purchaser until such act shall have been done. Thus, if goods, the weight of which is unknown, are sold by weight, or if a given weight or measure is sold out of a larger quantity, the property will not pass to the purchaser until the price shall have been ascertained by weighing the goods in the one case, or the goods sold shall have been separated by weight or measure in the other. So if an article be ordered to be manufactured, the property in it will not vest in the person who gave the order, until it shall, with his consent, have been set apart for his benefit.

With regard to goods of the value of $40 or upwards, additional requisites have been enacted by the seventeenth section of the Statute of Frauds, which provides "that no contract for the sale of any goods, wares, and merchandises for the price of £10 sterling or upwards, shall be allowed to be good except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such con-

tract, or their agents thereunto lawfully authorized." And by a still more recent act (Cons. St. U. C. cap. 44, s. 11) this enactment "shall extend to all contracts for the sale of goods of the value of $40 and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not, at the time of such contract, be actually made, procured, or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery."

If an agreement for sale of goods is not to be performed within the space of one year from the making thereof, then, however small be the value of the goods, no action can be brought upon it, unless the agreement, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

Agreements should be signed by all the parties thereto; and where something is to be done on both sides, it is very useful to have them written in duplicate, so that each party may possess one copy.

The following are a few forms of agreements in common use:—

Agreement for Sale of Land.

ARTICLES OF AGREEMENT, made this day of , in the year of our Lord one thousand eight hundred and , between A. B. of, &c., of the first part, and C. D. of, &c., of the second part.

Whereas the said part of the first part, ha agreed to sell to the part of the second part, and the part

of the second part ha agreed to purchase of and from the said part of the first part, ALL AND SINGULAR, th certain tract or parcel of land, being composed of [*describe premises,*] together with all the privileges and appurtenances thereto belonging, at and for the price or sum of , lawful money of Canada, payable in manner and on the days and times hereinafter mentioned, that is to say: [*state terms of payment.*]

NOW IT IS HEREBY AGREED between the parties aforesaid in manner following, that is to say: The said part of the second part, for sel heirs, executors, and administrators, do covenant, promise, and agree, to and with the said part of the first part, heirs, executors, administrators, and assigns, that he or they shall and will well and truly pay, or cause to be paid, to the said part of the first part, heirs, executors, administrators, or assigns, the said sum of money, together with the interest thereon, on the days and times and in manner above mentioned; and also shall and will pay and discharge all taxes, rates, and assessments, wherewith the said land may be rated or charged from and after this date. In consideration whereof and on payment of the said sum of money with interest as aforesaid, in manner aforesaid, the said part of the first part do , for sel , heirs, executors, administrators, and assigns, covenant, promise, and agree, to and with the said part of the second part, heirs, executors, administrators, or assigns, to convey and assure, or cause to be conveyed and assured, to the said part of the second part, heirs and assigns, by a good and sufficient Deed, in fee simple,

with the usual covenants, the said piece or parcel of land, with the appurtenances, freed and discharged from all incumbrances, but subject to the conditions and reservations expressed in the original grant from the Crown, and shall and will suffer and permit the said part of the second part, heirs and assigns, to occupy and enjoy the same, until default be made in the payment of the said sum of money, or any part thereof, on the days and times, and in manner above mentioned, subject, nevertheless, to impeachment for voluntary or permissive waste. And it is expressly understood that time is to be considered the essence of the agreement, and unless the payments are punctually made, the said part of the first part is at liberty to re-sell the said land.

In Witness Whereof, the said parties have hereto set their hands and seals, the day and year first above mentioned.

Signed and sealed in presence of

X. Z. A. B. [L. S.]
C. D. [L. S.]

(ANOTHER FORM.)

Articles of Agreement, made and entered into this day of , in the year of our Lord one thousand eight hundred and , between A. B. of, &c., for heirs, executors, administrators, and assigns, of the first part, and C. D. of, &c., for heirs, executors, administrators, and assigns, of the second part. Witnesseth, that the said part of the first part, in consideration of the covenants and agreements hereinafter contained, on the part of the said

part of the second part, Do hereby agree with the said part of the second part to sell to ALL th [*describe property*] with the appurtenances, for the sum of of lawful money of Canada, to be paid at the days and times and in manner following, that is to say: [*state terms of payment.*]

AND FURTHER, that he the said part of the first part will, upon receiving from the said part of the second part, executors or administrators, the sum of as above provided, execute to the said part of the second part, heirs, executors, administrators, or assigns, a good and sufficient Deed of Conveyance in fee simple, for vesting the said premises, with the appurtenances, in the said part of the second part, heirs or assigns, or as he or they shall appoint, free from all incumbrances.

AND the said part of the second part, in consideration of the premises, do hereby covenant and agree with the said part of the first part to purchase the said premises, with the appurtenances, upon the terms and conditions aforesaid, and that the said part of the second part, heirs, executors, administrators, or assigns, will well and truly pay or cause to be paid to the said part of the first part, heirs, executors, administrators, or assigns, the said purchase money or sum aforesaid, on the days and times and in manner above provided for payment thereof, without making any deduction, defalcation, or abatement thereout for or in respect of any taxes, assessments, or otherwise howsoever.

AND it is hereby mutually agreed, that the said part of the second part may forthwith take posses-

sion of the said premises, and receive the rents and profits thereof to own use and benefit, as from the , up to which time the said part of the first part will clear all out-goings payable in respect of the said premises.

And that in case of default in payment of any part of the said purchase money or interest as above provided, for three months after the same shall become due, the whole amount of the said purchase money shall thereupon become due and payable, and be recoverable by the said party of the first part.

As Witness the hands and seals of the said parties.

Signed, sealed, and delivered in the presence of

X. Z. A. B. [L. S.]
C. D. [L. S.]

(another form.)

This Agreement, made and entered into the day of , in the year of our Lord one thousand eight hundred and , between A. B. of, &c., of the first part, and C. D. of, &c., of the second part, Witnesseth, That the said party of the first part, in consideration of the covenants and agreements hereinafter contained, agrees to sell unto the said party of the second part, all th piece or parcel of land known and described as lot number , for the sum of of lawful money of Canada; and the said party of the second part, in consideration of the premises, agrees to pay to the said party of the first part the said sum of , in manner following, namely: And in case default shall be made in the payment of the principal or interest, as above

provided, for the period of three months after the same shall have become due as above stipulated, it is expressly understood and agreed upon between the said parties, that the whole amount of the principal sum of money hereby agreed to be paid, together with the interest thereon, shall at once become due and payable: Further, the said party of the first part agrees, that on receiving payment in full of the said sum of , with the interest thereon as aforesaid, he will execute and deliver to the said party of the second part a good and sufficient Deed, for the conveying and assuring to him, the said party of the second part, the fee simple of the said premises, free from all incumbrances, and for the due performance of this Agreement the said parties bind themselves, each to the other, in the penal sum of ; and it is understood, that the stipulations aforesaid are to apply to, and to bind the heirs, executors, administrators, and assigns of the respective parties, and that the party of the second part is to have immediate possession of the premises.

In Witness Whereof, they, the said parties, have hereunto set their respective hands and seals, on the day and year first above written.

In the presence of A. B. [L. S.]
X. Z. C. D. [L. S.]

(another form.)

Articles of Agreement, made the day of , in the year of our Lord one thousand eight hundred and , between A. B. of the of , in the county of , of the first part, and

C. D. of the of , in the county of , of the second part, WITNESS, that the part of the first part, for heirs, executors, and administrators, covenants with the part of the second part, heirs and assigns, that he shall and will, on the payment of the sum of and interest thereon, on the days and times and in manner hereinafter mentioned, and also on the observance and performance of the convenants and conditions hereinafter mentioned by the part of the second part, heirs or assigns, but not otherwise, well and sufficiently convey, or cause to be conveyed, to the part of the second part, heirs and assigns, by a good and sufficient deed in fee simple, all and singular th certain parcel or tract of land and premises situate, lying and being in the of , in the county of , and Province of Canada, consisting of , free from all incumbrances, made, suffered, or created, by the part of the first part, or any person or persons claiming by, from, or under . And the part of the second part, for heirs, executors, and administrators, covenant with the part of the first part, executors and administrators, that the part of the second part, heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, to the part of the first part, executors or administrators, the said sum of , in the manner following: That is to say ; and in default of the payment of such instalments or interest in any year, within one month after any or either of the days on which the same is made payable, the said principal sum of , or any part thereof that at the time of such default shall be

remaining unpaid, shall immediately become due and payable; And the part of the second part, heirs, executors, or administrators, shall immediately pay the same, and all interest that may be due thereon, although the day fixed for the payment of the said principal sum by these presents shall not have arrived at the time of such default; and also shall and will pay and satisfy all rates and taxes of what nature or kind soever they may be, whether parliamentary or municipal, that are now or may hereafter be assessed upon or against the said land, or the owner or occupier thereof, or the said principal sum of money, or any part thereof, during the continuance of these presents.

AND IT IS HEREBY FURTHER EXPRESSLY AGREED between the said parties hereto, that the observance and performance of the covenants and conditions herein contained, and time, as well in the payment of the interest as of the principal money as aforesaid, are strictly of the essence of this contract.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in presence of

X. Z. A. B. [L. S.]
C. D. [L. S.]

(ANOTHER FORM.)

ARTICLES OF AGREEMENT, made the day of , in the year of our Lord one thousand eight hundred and , between A. B. of, &c., of the first part, and C. D. of, &c., of the second part;

WITNESSETH as follows: That the said party of the first part, in consideration of the sum of , lawful money of Canada, to be paid to the said party of the first part, and of the covenants to be performed by the said party of the second part as hereinafter expressed, hereby agrees to sell to the said party of the second part, his heirs, executors, administrators, or assigns, ALL that certain tract of land situate , with the privileges and appurtenances thereunto belonging.

AND the said party of the second part, in consideration of the covenants herein contained on behalf of the said party of the first part, agrees to purchase of the said party of the first part, the above described land, and to pay for the same to the said party of the first part, or legal representatives, the sum of , lawful money of Canada, in manner following, that is to say: with interest, to be computed from the date of these presents, on the whole sum that shall be from time to time unpaid, and to be paid annually. AND ALSO, that will, so long as any part of the principal or interest of the said consideration money remains unpaid, well and faithfully, in due season, in each and every year, pay, or cause to be paid, all taxes and assessments that may be levied or assessed on said premises, and that will not commit, or suffer any other person to commit, any waste or damage to the said lands, or the appurtenances, except for fire-wood, improvements or otherwise, for his own use, or while clearing the land for cultivation in the ordinary manner.

The said party of the first part further covenants and agrees with the said party of the second part, that upon the faithful performance by the said party of the second part of the covenants and agreements by to be performed, and upon the payment of the several sums of money above mentioned, and the interest thereon, at the times and in the manner, and at the place above mentioned, to the said party of the first part, that thereupon the said party of the first part will well and faithfully execute and deliver a good and sufficient Deed or Deeds with such covenants and assurances as counsel learned in the law shall advise and require, and thereby convey to the said party of the second part, heirs and assigns, a good and unincumbered title in fee simple, to the above described premises, with their appurtenances.

IT IS FURTHER COVENANTED AND AGREED, by and between the said parties hereto, that the said may immediately enter on the said Land, and remain thereon and cultivate the same as long as shall fulfil and perform all the agreements hereinbefore mentioned on part, to be fulfilled and performed, and no longer, and that if shall, at any time hereafter, violate or neglect to fulfil any of said agreements, shall forfeit all right or claim under this contract, and be liable to the said for damages, and shall also be liable to be removed from the said land in the same manner as is provided by law for the removal of a tenant that holds over after the expiration of the time specified in his lease.

And it shall be lawful for the said party of the first part, at any time after the violation or non-ful-

filment of any of the said agreements on the part of the said party of the second part, to sell and convey the said land, or any part thereof, to any person whomsoever; and the said party of the first part shall not be liable in any way, nor to any person, to refund any part of the money which may have received on this contract, nor for any damages on account of such sale. And it is hereby expressly understood and declared that the prompt performance of this contract is in contemplation of the parties, that the time is and shall be deemed and taken as of the very essence of this contract, and that unless the same shall in all respects be complied with by the said party of the second part at the respective times and in the manner above limited and declared, the said party of the second part shall lose and be debarred from all rights, remedies, or actions, either in law or equity, upon or under this contract.

These Articles of Agreement are hereby declared to be binding on the respective parties hereto, their heirs or assigns, in the sum of

In Witness Whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of

X. Z. A. B. [L. S.]
C. D. [L. S.]

Agreement for Sale by way of Lease, Reserving Purchase Money as Rent.

This Agreement, made the day of in the year of our Lord one thousand eight hundred

and , BETWEEN A. B., of &c., of the first part, and C. D., of &c., of the second part.

WHEREAS, the said party of the second part hath contracted with the said party of the first part for the purchase, in fee simple, of all and singular the land, tenements, hereditaments, and premises hereinafter mentioned to be hereby demised, for the sum of [$] lawful money of Canada, to be paid on the days and times and in manner hereinafter mentioned. And whereas the said parties are willing and desirous that the said party of the second part shall go into immediate possession and occupation of the said land, tenements, hereditaments, and premises, and receive a conveyance of the fee simple and inheritance thereof, so soon as the principal sum shall be fully and faithfully paid on the days and times and in manner after mentioned (all and singular other the covenants and agreements hereinafter contained, and which on the part and behalf of the said party of the second part, his executors, administrators, and assigns, are to be paid, fulfilled, performed, and kept, having been well and truly paid, performed, fulfilled, and kept, according to the true intent and meaning of these presents), and that in the mean time the lawful interest on the said principal sum should be reserved and paid as rent issuing out of the said land, tenements, hereditaments, and premises hereby demised: NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the premises and of the rents, covenants, and agreements hereinafter reserved and contained, and which on the part and behalf of the said party of the second part, his

executors, administrators, and assigns, are to be paid, done, and performed, he, the said party of the first part, HATH demised, leased, set, and to farm let, and by these presents DOTH demise, lease, set, and to farm let, unto the said party of the second part, his executors, administrators, and assigns, ALL that land, tenements, hereditaments, and premises, situate, lying, and being in the in the County of in the Province aforesaid [*here describe the premises*], together with all out-houses, waters, and water-courses thereon erected, lying or being, and all and singular other the rights, members, and appurtenances thereunto belonging, or in any wise appertaining. To HAVE AND TO HOLD the said land, tenements, hereditaments, and premises hereby demised, or intended so to be, with the appurtenances thereunto belonging, unto the said party of the second part, his executors, administrators, and assigns, from the day of in the year of our Lord one thousand eight hundred and , for and during, and unto the full end and term of years from thence next ensuing, and fully to be completed and ended. SUBJECT NEVERTHELESS to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown, YIELDING AND PAYING therefor, yearly and every year during the said term hereby demised, unto the said party of the first part, his heirs, executors, administrators, and assigns, the yearly rent or sum of of lawful money of Canada, in even and equal yearly payments on the day of and day of in each and every year during the said term, without any

deduction, defalcation, or abatement thereof, or out of any part thereof, for or in respect of any taxes, rates, levies, charges, rents, assessments, statute labor, or other imposition of what nature or kind soever, either already taxed, rated, levied, charged, assessed, or imposed, or hereafter to be taxed, rated, levied, charged, assessed, or imposed, whether the same be now due, or shall hereafter become due, on the said demised premises or any part thereof, or on the said rent or any part thereof, or on the said principal sum of money specified in the Schedule first above mentioned, or any part thereof, or on either of the said parties to these presents, their or either of their heirs, executors, administrators, or assigns, or any of them in respect thereof, or any part thereof, by authority of Parliament or otherwise howsoever, the first payment of the said rent hereby reserved to be made on the day of in the year of our Lord one thousand eight hundred and . PROVIDED ALWAYS, NEVERTHELESS, that on payment of any instalment or instalments of the principal sum hereinafter specified according to the covenant hereinafter contained, for payment thereof, and the true intent and meaning of these presents, the said rent hereby reserved shall from thenceforth be proportionably reduced, so as at no time to exceed the annual lawful interest on such part of the said principal sum as shall from time to time remain due and owing after the payment of such instalment or instalments respectively: AND PROVIDED, ALSO, that if the said yearly rent or any part thereof, or the said principal sum or any part thereof, shall at any time or times hereafter be behindhand

and unpaid by the space of thirty days next after any or either of the days on which the same or any part thereof ought to be paid, as herein or hereby provided, according to the true intent and meaning of these presents, OR if the said party of the second part, his executors, administrators, or assigns, or any of them, shall at any time assign, or set over, or demise, or underlease the said demised premises, or any part thereof, or in any other manner part with the possession of the same, to any person or persons whomsoever, for all or any part of the said demised term, without the special license or consent of the said party of the first part, his heirs or assigns, first had in writing under hand and seal, OR if the party of the second part, or any one acting under or claiming from him, shall at any time during the continuance of these presents commit or suffer to be committed any waste or destruction to any of the timber upon the said land, for any other purpose whatsoever than bringing the land into cultivation, THEN, and in any and every of the said cases, it shall and may be lawful for the said party of the first part, his heirs or assigns, into the said demised premises or any part thereof, in the name of the whole, to re-enter, and out of the same to eject, expel, amove, and put the said party of the second part, his executors, administrators, and assigns, and the same to have again, repossess, and enjoy, as in his and their first and former estate, and from the time of any such re-entry by the said party of the first part, his heirs or assigns, the said term hereby demised, or so much thereof as shall be then unexpired, and these presents, and every

clause, matter, and thing therein contained, shall cease and determine, and forever thereafter be null and void to all intents and purposes whatsoever, anything herein contained to the contrary thereof in any wise notwithstanding. And the said party of the second part Doth hereby for himself, his heirs, executors, administrators, and assigns, covenant promise, and agree, to and with the said party of the first part, his heirs and assigns, in manner following, that is to say: That he the said party of the second part, his heirs, executors, administrators, and assigns, or some of them, shall and will well and truly pay or cause to be paid unto the said party of the first part, his heirs, executors, administrators, or assigns, the said yearly rent, on the days and times and in manner hereinbefore mentioned, for payment thereof, according to the true intent and meaning of these presents. And also that he the said party of the second part, his heirs, executors, administrators, or assigns, or some of them, shall and will, during the said term hereby demised, pay, do, and perform all taxes, rates, levies, charges, rents, assessments, statute labor, or other imposition above mentioned, lawfully charged or to be charged, whether the same be now due, or shall hereafter become due, on the said demised premises, on the said rent, or on the said principal sum, or on any part thereof, or on any person or persons in respect thereof, or any part thereof, as aforesaid; And also that he the said party of the second part, his executors, administrators, or assigns, or any of them, shall not nor will at any time or times during the said term hereby

demised, assign or set over, underlet or underlease, the said demised premises, or any part thereof, or in any other manner part with the possession of the same or any part thereof during any part of the said demised term, without such special license and consent as is hereinbefore specified, as aforesaid; AND ALSO THAT HE the said party of the second part, or any one acting under or claiming from him, shall not at any time, during the continuance of these presents, commit, or suffer to be committed, any waste or destruction to any of the timber upon the same land, for any other purpose than bringing the land into cultivation; AND ALSO THAT HE the said party of the second part, his heirs, executors, administrators, or assigns, or some of them, shall and will well and truly pay or cause to be paid, unto the said party of the first part, his heirs, executors, administrators, or assigns, the full and just sum of of lawful money of Canada, on the days and times and in manner following, that is to say [*here set forth the terms and manner in which the purchase money is to be paid*]. AND the said party of the first part, DOTH hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree, to and with the said party of the second part, his executors, administrators, and assigns, in manner following, that is to say, THAT upon the due and faithful payment, performance, and fulfilment by the said party of the second part, his executors, administrators, or assigns, of all and singular the covenants and agreements herein contained, and which on the part and behalf of the said party of the second part,

his executors, administrators, and assigns, are to be paid, done, and performed, he the said party of the first part, his heirs, or assigns, shall and will, at the expiration or other sooner determination of the said term hereby demised, upon and at the request of the said party of the second part, his executors, administrators, or assigns, made to and upon him the said party of the first part, his heirs, executors, administrators, or assigns, or any of them, but at the proper costs and charges in the law of the said party of the second part, his executors, administrators, or assigns, well and sufficiently convey and assure, or cause to be well and sufficiently conveyed and assured, unto the said party of the second part, and his heirs, in fee simple absolute, or to such person or persons as his, her, or their heirs, in fee simple absolute, as the said party of the second part, his executors, administrators, or assigns, shall nominate and appoint, and to such uses as he or they shall direct, all and singular the said land, tenements, hereditaments, and premises hereby demised by such conveyances and assurances in the law, as by the said party of the second part, his executors, administrators, or assigns, or his or their counsel learned in the law, shall or may be reasonably devised, advised, or required, FREED, and discharged of and from all incumbrances whatsoever, BUT subject nevertheless to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown. WITH usual and proper covenants. AND it is hereby further expressly agreed upon by and between the said parties, that in case at any time any of the rent or interest

aforesaid or of the purchase money shall remain unpaid by the space of months after the same shall have fallen due, the party of the first part, his heirs or assigns, shall have full power to resell the said land at the best price which can be reasonably got for the same, and thereby utterly extinguish and bar all claim, interest, and title of the party of the second part, and all claiming under or by him in the same land — such resale to be either for cash or upon credit as the party of the first part, his heirs or assigns, may determine. And that the party of the first part, his heirs or assigns, may in the first place pay himself the expenses of such resale, and the whole of the claim due, or to become due, by the party of the second part, or any one claiming by or under him, out of the proceeds of such resale, and pay the balance (if any there be) when collected, over to the party of the second part, or the person entitled thereto; And that the party of the second part, or those claiming by or under him, shall be answerable to the party of the first part, his heirs or assigns, for any deficiency which may happen to be produced by the resale between the sum then due and to become due, under these presents, to the party of the first part, his heirs or assigns, and the proceeds of such resale. In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of

X. Z. A. B. [L. S.]

C. D. [L. S.]

Contract to Erect a House.

AN AGREEMENT made the day of , in the year of our Lord 18 , BETWEEN T. G., of , Builder, of the first part, T. C. (*surety*), of , of the second part, and J. B., of , of the third part.

WHEREAS, the said J. B. is possessed of a piece of ground situate , upon which he is desirous of erecting a dwelling-house and offices according to the elevation, plans, and specification prepared for that purpose by W. M., surveyor, and under the direction and to the satisfaction of the said W. M., or other surveyor for the time being of the said J. B., his executors, administrators, or assigns, which said elevation, plans, and specification, are marked with the letters A, B, C, D, E, F, and G, and are signed by the said T. G., T. C., and J. B., and the said specification is contained in the schedule hereunder written, or hereunto annexed; AND the said T. G. has proposed to erect and complete the said dwelling-house and offices, and to make and execute all other works mentioned and specified in the said elevation, plans, and specification, within the time hereinafter limited for that purpose, and according to the stipulations and agreements hereinafter contained, at or for the price or sum of , which proposal the said J. B. hath agreed to accept on the said T. G., together with the said T. C., as his surety, entering into the agreements hereinafter contained:

NOW IT IS HEREBY WITNESSED, That the said T. G. and T. C. do, for themselves, their heirs, executors,

and administrators, and each and every one of them, doth for himself, his heirs, executors, and administrators, hereby agree with and to the said J. B., his executors, administrators, and assigns, in manner following: (that is to say) that he, the said T.G., shall, at his own cost and charges, forthwith erect and complete, make and execute, with all proper and necessary materials, workmanship, and labor, of the best kinds in every respect, and in the most substantial and workmanlike manner, upon the said piece of ground, a dwelling-house and offices behind the same, with the appurtenances, and all other works, matters, and things mentioned and specified in the said elevation, plans, and specification, under the direction and to the satisfaction of the said W. M., or other the surveyor for the time being of the said J. B., his executors, administrators, or assigns; AND for that purpose shall find and provide all proper and necessary materials, implements, and machinery; and shall make good all damages which may be occasioned either to the said dwelling-house, offices, and works, or any of them, or to adjoining buildings, by the execution of the same works or any of them; and shall cleanse all drains and cess-pools in or about the premises, and cart and clear away at such times and in such manner as shall or may be directed by the said W. M., or other surveyor as aforesaid, all surplus earth and waste or useless materials, implements, and machinery, which may from time to time remain during the execution of the same works, or at the completion thereof; AND ALSO shall pay and discharge all fees now due, or hereafter to become due, to the district surveyor or

surveyors in respect of the premises, and shall indemnify the said J. B., his executors, administrators, and assigns, of and from the same fees, and all claims and demands on account thereof; AND shall at his own costs and charges from time to time, until the said dwelling-house, offices, and works, shall be erected, completed, made, and executed, and the said J. B., his executors, administrators, or assigns, shall take possession of the premises, insure, or cause to be insured, in the joint names of the said J. B., his executors, administrators, or assigns, and of the said T. G., his executors or administrators, and for the sum of , all and singular the erections and buildings for the time being standing on the said piece of ground, to the full value thereof, in some public insurance office to be approved of by the said J. B., and shall deliver the policy of insurance to the said J. B., his executors, administrators, and assigns, and shall produce and show to the said J. B., his executors, administrators, or assigns, the receipts for the premium of insurance, when requested so to do; and that in case of fire, all the moneys to be recovered by virtue of such insurance shall forthwith be applied in reinstating the premises, under the direction and to the approbation of the said W. M. or other surveyor as aforesaid: AND that the said T. G. shall well and sufficiently cover in, or cause to be covered in, the dwelling-house and offices so to be erected as aforesaid, before the day of , and shall complete, make, and execute, or cause to be completed, made, and executed, all and singular the said dwelling-house, offices, and other works, in manner aforesaid, and according to

the true intent and meaning of these presents, before the day of : AND that if the said T. G., his executors or administrators, shall not so well and sufficiently cover in the said dwelling-house and offices before the said day of , or shall not so complete, make, and execute, the said dwelling-house, offices, and works before the said day of , they, the said T. G. and T. C., shall pay to the said J. B. the sum of for every week during which the said dwelling-house and offices shall remain uncovered in after the said day of , and the like sum for every week the said dwelling-house, offices, and works shall remain unfinished after the said day of ; which sums may be recovered as liquidated damages, or may be deducted from the sums payable to the said T. G. under this agreement. PROVIDED ALWAYS, that in case the said J. B., his executors, administrators, or assigns, or his or their surveyor, shall require any extra or additional works to be done, or shall cause the works to be delayed in their commencement or their progress, the said T. G. shall be allowed to have such additional time for covering in and finishing the said buildings and works, beyond the said days above fixed, as shall have been necessarily consumed in the performance of such extra or additional works, or as shall have been lost by the delay caused by the said J. B., his executors, administrators, or assigns, or his or their surveyor as aforesaid; and the said payments for delay shall not become payable until after the expiration of such additional time or times.

AND the said T. G. and T. C. do hereby further

agree with the said J. B., that in case the said W. M., or other surveyor as aforesaid, shall be dissatisfied with the conduct of any workman employed by the said T. G. in the said works, or with any materials used or brought upon the said premises for the purpose of being used in the said works, and shall give notice thereof in writing under his hand to the said T. G., he, the said T. G., will forthwith discharge such workman from the said works and remove the said materials; and that in case the said T. G. shall not, in the judgment of the said W. M. or other surveyor as aforesaid, employ a sufficient number of workmen in the execution of the said works, or have on the premises a sufficient quantity of materials or implements of proper quality for the said works, and the said W. M. or other surveyor as aforesaid shall, by writing under his hand, require the said T. G. to employ an additional number of workmen, or bring upon the premises an additional quantity of materials or implements of proper quality, and shall specify in such notice the number and description of additional workmen to be employed, and the quantity and description of additional materials or implements to be supplied, and the said T. G. shall forthwith employ in the said works such additional number of workmen, and shall forthwith bring upon the premises such additional quantity of materials or implements for the said works: and that in case he shall refuse or neglect for the space of seven days to comply with any such notice or request, it shall be lawful for the said W. M. or other surveyor as aforesaid to dismiss and discharge the said T. G. from the further execution

of the said works, and for the said J. B., his executors, administrators, and assigns, to employ some other person to complete the same; and that in such case the sum agreed to be paid to such other person to complete the said works (such sum being approved by the said W. M. or other surveyor as aforesaid) shall be deducted from the said sum of , and the balance, after making any other deductions which the said J. B. shall be entitled to make under this agreement, shall be paid by the said J. B. to the said T. G. in full for the work done by him, at the expiration of one month after he shall have been so discharged as aforesaid: And it is hereby further agreed by and between the parties hereto, that all the materials brought upon the said piece of ground for the purpose of being used in the said buildings, except such as shall be disapproved of by the said W. M. or other surveyor as aforesaid, shall, immediately they shall be brought upon the said premises, become the property of the said J. B., and shall be used in the said works.

And the said J. B. doth hereby, in consideration of the works so agreed to be done by the said T. G., agree with the said T. G., that he, the said J. B., shall pay to the said T. G. for the same the said sum of in manner following, that is to say: the sum of within one week after the said W. M. or other surveyor as aforesaid shall have certified in writing to the said J. B., his executors, administrators, or assigns, under his hand, that work to the value of has been done under this agreement and the further sum of within one week after the said W. M. or

such other surveyor shall have certified as aforesaid that further work to the value of has been done under this agreement, and so on shall pay for every worth of work so certified as aforesaid, until the whole of the said works shall be finished, and shall pay the balance remaining unpaid within one month after the said works shall have been completed and finished to the satisfaction of the said W. M. or such other surveyor, and the said W. M. or such other surveyor shall have certified to the said J. B. that the said works have been completed and finished to his satisfaction. PROVIDED ALWAYS, and it is hereby further agreed by the parties hereto, and particularly by the said T. G. and T. C., that if the said J. B., his executors, administrators, or assigns, shall at any time be desirous of making any alterations or additions in the erection or execution of the said dwelling-house, offices, and other works, then and in such case the said T. G. shall erect, complete, make, and execute the said dwelling-house, offices, and other works, with such alterations and additions as the said J. B., his executors, administrators, or assigns, or the said W. M. or such other surveyor, shall from time to time direct by writing under his or their hand or hands, and to the satisfaction of the said W. M. or such other surveyor; and the sum or sums of money to be paid or allowed between the said parties in respect of such alterations and additions shall be settled and ascertained by the said W. M. or such other surveyor, whose determination shall be final. PROVIDED ALWAYS, and it is hereby further agreed, that in the settling and ascertaining the said sum or sums

of money, the said W. M. or such other surveyor shall not include any charge for day-work, unless an account thereof shall have been delivered to the said J. B., his executors, administrators, or assigns, or the said W. M. or such other surveyor, at the end of the week in which the same shall have been performed. PROVIDED ALSO, and it is hereby further agreed, that no such alteration or addition shall release the said T. G. and T. C., their executors or administrators, or any or either of them, from the observance and performance of the agreements herein contained on the part of the said T. G., his executors or administrators, to be observed and performed, so far as relates to the other parts of the said dwelling-house, offices, and works; but that the same agreements shall in all respects be observed and performed in like manner as if no such alteration or addition had been directed. PROVIDED ALSO, and it is hereby agreed, that if the said W. M. shall die, or cease to act as the surveyor of the said J. B., his executors, administrators, or assigns, and the said T. G., his executors or administrators, shall be dissatisfied with the surveyor for the time being, to be appointed by the said J. B., his executors, administrators, or assigns, then it shall be lawful for the said T. G., his executors or administrators, at his own expense, to employ a surveyor on his behalf in the adjustment of the accounts, to act with the surveyor for the time being of the said J. B., his executors, administrators, or assigns; and in case of disagreement between such two surveyors, they shall be at liberty to nominate a third; and the said three surveyors, or any two of them, shall and may exercise

all the powers and discretion which the said W. M. could or might have exercised under or by virtue of these presents, if he had lived and continued to act as the surveyor of the said J. B., his executors, administrators, or assigns. And it is hereby further agreed, that if the said T. G., his executors or administrators, shall so employ a surveyor on their behalf, he shall be nominated within ten days after the said T. G. shall be informed of the surveyor for the time being appointed by the said J. B., his executors, administrators, or assigns, and notice in writing shall forthwith be given of such nomination to the said J. B., his executors, administrators, or assigns.

In Witness, &c.

Schedule.—[The Specification referred to by the foregoing Articles of Agreement.]

Sub-Contract between a Builder and a Carpenter.

An Agreement made the day of , in the year of our Lord 18 , between T. G., of , Builder, and C. D., of , Carpenter.

Whereas the said T. G. hath entered into a contract with J. B., of, &c., to erect a dwelling-house and offices according to certain plans, elevations, and specifications, referred to in said contract, under the superintendence of W. M. or other surveyor of the said J. B., and which contract is dated the day of : Now it is hereby agreed, that in consideration of the sum of to be paid by the said T. G. to the said C. D. as hereinafter mentioned, the said C. D. shall do all the carpenter's work necessary to be done for the completion of the said contract, and referred

to in the said plans and specifications, and provide all materials and implements necessary for the performance of such work, and shall do the same in all things according to the said contract and specifications, and shall in all things abide by, perform, fulfil, and keep the said terms and stipulations of the said contract, so far as the same are or shall be applicable to such carpenter's work; and that in case the said T. G. shall become liable to pay any penalties under the said contract in consequence of the delay of the said C. D. in the performance of the work agreed to be performed by him, the said C. D. shall pay to the said T. G. the amount of such penalties; and that in case the said W. M. or other surveyor appointed to superintend the works under the said contract shall disapprove of the work done by the said C. D., or the materials used by him, or the manner in which such work is done, it shall be lawful for the said T. G. to dismiss and discharge the said C. D. from the further performance of such work, and employ some other person to complete the same; and that in such case the money which the said T. G. shall pay to the said other person for the completion of the said works shall be deducted from the sum which would otherwise be payable to the said C. D. under this agreement; And that for the consideration aforesaid, the said T. G. shall pay to the said C. D. the sum of $, in manner following: 75 per cent. on the price and value of the work done by the said C. D. during any week, to be paid to him on the Saturday in every week during the continuance of the said works, and the balance within one month

after the completion of the said dwelling-house and offices.

In Witness, &c.

(*This form may be easily adapted to any particular work on a building, as Bricklayer's, Painter's, &c.*)

Contract to do Repairs, &c.

An Agreement made the day of , in the year of our Lord 18 , between A. B., of, &c., and C. D., of, &c.: The said A. B. agrees to do all the works hereunder specified, in the best and most workmanlike manner, and to provide for such works all necessary materials and things of the best quality, and to complete and finish the said works on or before the day of next; and in case the said works shall not be finished on or before the said day of , to pay or allow to the said C. D., out of the moneys payable under this agreement, the sum of for each day during which the said works shall remain unfinished after the said day of ; and that in case the said C. D. shall require any additions or alterations to be made to the works hereunder specified, to execute such additions and alterations in the best and most workmanlike manner, with materials of the best quality: And it is hereby agreed, that in case any additional works shall be required by the said C. D., or in case the said C. D. shall delay the execution of the said works, the said A. B. shall have such additional time for the performance of the said works, after the said day of , as shall have been consumed in the execution of such addi-

tional works, or as the time during which the said C. D. shall have delayed the said works, and that the payments for delay shall not be payable until after the expiration of such additional time: AND it is hereby further agreed, that materials brought upon the premises of the said C. D. for the purpose of being used in the said works, shall, if of proper description and quality, immediately become the property of the said C. D.: AND the said C. D. agrees to pay to the said A. B. for the said works the sum of within one week after the same shall be finished: AND it is hereby agreed, that in case of any additions or alterations being made in or to the said works, the price of such additions or alterations shall be estimated in proportion to the said sum of for the whole of the said works, and such price so estimated shall be either added to or deducted from the sum of

IN WITNESS, &c.

Agreement for Sale of Merchant's Stock.

THIS AGREEMENT, made the day of , A. D. 18 , BETWEEN A. B., of, &c., merchant, of the one part, and C. D., of, &c., merchant, of the other part.

The said A. B. agrees to sell, and the said C. D. agrees to buy, all the stock of goods, wares, and merchandise now being in and upon the store occupied by the said A. B., at aforesaid at the invoice price thereof (*or at the sum of* $, *or otherwise, as agreed on*), an account of such goods, wares, and merchandise being taken by the parties hereto in the presence of each other. AND it is hereby agreed that any of the said goods, wares, or merchan-

dise which may be damaged, shall be appraised and valued by three disinterested persons; each of the parties hereto selecting one of such persons, and the two so selected appointing the third; and that the price set upon such damaged goods, wares, or merchandise by the said three persons shall be substituted for the invoice price thereof; and that within ten days after the value of the said goods, wares, and merchandise shall have been ascertained as aforesaid, the said C. D. is to pay the valuation thereof to the said A. B. AND the said A. B. agrees to make, execute, and deliver unto the said C. D. a good and sufficient bill of sale and conveyance thereof, and to give to the said C. D. quiet and peaceable possession thereof upon payment to him, the said A. B., by the said C. D., within the time before specified, of the invoiced or appraised value as aforesaid.

IN WITNESS, &c.

(*If desired, the form for appraising damaged goods can be made applicable to the entire stock.*)

Agreement for Sale of Grain.

It is agreed this day of , A. D. 18 , by and between A. B., of, &c., and C. D., of, &c., as follows: The said A. B. agrees to sell to the said C. D. five thousand bushels of wheat, to be delivered to the said C. D. at , on or before the first day of January next, free of all charges, at the price or sum of per bushel. AND the said C. D. agrees to purchase the said wheat, and to pay therefor at the rate aforesaid, upon delivery as aforesaid. AND

the said A. B. hereby guarantees and warrants the said wheat to be good, clean, and merchantable grain.

Witness our hands.

Signed in presence of { A. B. / C. D. }

CHAPTER III.

Of Arbitration.

INSTEAD of the ultimate remedy of an action at law or suit in equity, recourse is sometimes had for the settlement of disputes to the more amicable expedient of arbitration. And in some transactions, especially in articles of copartnership between traders, it is usual to stipulate that if any dispute shall arise it shall be referred to the determination of two indifferent persons as arbitrators, or of their umpire, who is usually, and very properly, required to be chosen by the arbitrators before they proceed to take the subject in question into consideration. And it is agreed that the award in writing of the arbitrators, or of their umpire in case of their disagreement, shall be binding and conclusive on all parties. It is generally also further provided, that in case either party should neglect or refuse for a given time to appoint an arbitrator, the arbitrator chosen by the other party may make an award, which shall be binding on both.

As the courts of law and equity have full jurisdiction on all questions arising out of agreements of

any kind, it follows that they retain a jurisdiction over matters which the parties themselves have agreed should be referred to arbitration. Notwithstanding, therefore, an agreement to refer disputes to arbitration, either party may bring the matter into court; although if the agreement should contain an express covenant not to sue, and especially if arbitrators be actually named, it seems that such covenant may be effectually pleaded in bar to any suit in equity. And without such a covenant, the circumstance of the parties having agreed to refer to arbitration will induce a court of equity to pause before granting to any of them summary relief on a point which they have expressly agreed to settle by amicable means. If, however, one of the parties should, notwithstanding his agreement, refuse to name an arbitrator, the Court of Chancery will not entertain a bill to compel him to do so, neither will it substitute the master for the arbitrators; for the court acts only when it has it in its power itself to execute the whole contract in the terms specifically agreed upon.

The reference of disputes to arbitration appears to have been early adopted by the courts of law, with the consent of the parties to an action, in cases where the matter in dispute could be more conveniently settled in this mode. A verdict was taken for the plaintiff by consent, subject to the award of an arbitrator agreed upon by the parties, and the reference was made a rule of court. This plan is still continually adopted. The arbitrators and the parties to the reference by this means become subject to the jurisdiction of the court, which has power to set aside

any award which may appear to have been given unjustly or through mistake of the law; or, if the award be valid, its performance may be enforced under the penalty of imprisonment for contempt of court. In order to extend the benefits of this mode of submission to arbitration to all cases of controversies between merchants and traders or others concerning matters of account or trade or other matters, an act of Parliament was passed in the reign of William the Third, intituled "An Act for determining differences by arbitration" (9 & 10 W. III. c. 15). This Act empowers all merchants and traders and others desiring to end by arbitration any controversy for which there is no other remedy but by personal action or suit in equity, to agree that their submission of their suit to the award or umpirage of any person or persons shall be made a rule of any of her majesty's courts of record which the parties shall choose. And it provides that in case of disobedience to the arbitration or umpirage to be made pursuant to such submission, the party neglecting or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court when he is a suitor or defendant in such court. And the process to be issued accordingly shall not be stopped or delayed in its execution by any order, rule, command, or process of any other court, either of law or equity, unless it shall be made appear on oath to such court that the arbitrators or umpire misbehave themselves, and that such award, arbitration or umpirage was procured by corruption or other undue means. It is also further provided that any ar-

bitration or umpirage procured by corruption or undue means shall be judged void, and be set aside by any court of law or equity, so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or umpirage, before the last day of the next term after such arbitration or umpirage is made and published to the parties.

Previously to a recent statute, either party might have revoked his submission, and thus determined the authority of the arbitrators; and this may still be done, if the submission relate to criminal matters, which are not within the statute. But it is now enacted (Cons. St. U. C. c. 22, s. 179) that the power and authority of any arbitrator or umpire, appointed by or in pursuance of any rule of court or judge's order or order of nisi prius in any action, or by or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of any of her majesty's courts of record, shall not be revocable by any party to such reference without the leave of the court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a judge. And the arbitrator or umpire is empowered and required to proceed with the reference notwithstanding any such revocation, and to make such award although the person making such revocation shall not afterwards attend the reference. And the court, or any judge thereof, may from time to time enlarge the term for any such arbitrator making his award. The court, or any judge, is also empowered under any such re-

ference, by rule or order to command the attendance and examination of witnesses, or the production of any documents. And if in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made a rule of court, it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, the arbitrator or umpire, or any one arbitrator, is authorized and required to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath; and any witness wilfully and corruptly giving false evidence shall be deemed guilty of perjury, and shall be prosecuted and punished accordingly. But an express order or agreement that the witnesses shall be examined upon oath is not now necessary; for every arbitrator or other person, having by law or by consent of parties authority to hear, receive, and examine evidence, may administer an oath to all such witnesses as are legally called before them respectively.

The authority of arbitrators is liable to be determined not only by a revocation of the submission, but also by the death of either of the parties previously to the making of the award. In order to obviate this inconvenience, it is now usual to insert in the order or rule of court, by which reference is made to arbitration, a provision that the death of either of the parties shall not operate as a revocation of the authority of the arbitrators, but that the award shall be delivered to the executors or administrators of the parties, or either of them, in case of their or his de-

cease. And the same stipulation may be effectually made in a submission to arbitration by private agreement.

When no time is limited for the making of the award, it must be made within a reasonable time; but if a given time be limited, the award must be made within that time, unless the time for making it be enlarged. And if the award is required to be made and ready to be delivered to the parties by a certain day, it will be considered as ready to be delivered if it be made, unless the arbitrators should fail to deliver it to either of the parties on request made for that purpose on the last day. The submission to arbitration frequently contains a power for the arbitrators or umpire to enlarge the time for making the award; and in this case the time may be enlarged from time to time by such arbitrators or umpire, provided the enlargement be made on or before the expiration of the time originally limited for making the award. And if the submission be made a rule of court, then, whether the arbitrators or umpire have power to enlarge the time or not, the court, or a judge thereof, has power to enlarge the time under the provisions of the statute above mentioned. And should no enlargement be formally made, yet the parties may, by continuing their attendance on the reference, or by recognizing the proceedings under it, virtually empower the arbitrators or umpire to make a valid award subsequently to the time originally limited.

In proceeding in the business of the arbitration, the arbitrators are bound to require the attendance of the parties, for which purpose notice of the meetings of

the arbitrators should be given to them. But if either party neglect to attend either in person or by attorney after due notice, the arbitrators may proceed without him. In taking the evidence the arbitrators are at liberty to proceed in any way they please, if the parties have due notice of their proceedings, and do not object before the award is made. But in order to obviate any objection, they ought to proceed in the admission of evidence according to the ordinary rules of law. The award should be signed by the arbitrators in each other's presence, and when made it must be both certain and final. Thus, if the award be that one party enter into a bond with the other for his quiet enjoyment of certain lands, this award is void for uncertainty; for it does not appear in what sum the bond should be. On the question of finality many cases have arisen. If the arbitrators be *empowered* to decide all matters in difference between the parties, the award will not necessarily be wanting in finality for not deciding on all such matters, unless it appear to have been *required* that all such matters should be determined by the award. If the award reserve to the arbitrators, or give to any other person, or to one of the parties, any further authority or discretion in the matter, it will be bad for want of finality. And if the award be that any stranger to the reference should do an act, or that money should be paid to or any other act done in favor of a stranger, unless for the benefit of one of the parties, such award will be void. An award, however, may be partly good and partly bad, provided the bad part is independent of and can be separated from that which is good. But if, by reason of the

invalidity of part of the award, one of the parties cannot have the advantage intended for him as a recompense for that which he is to do, according to that part of the award which would otherwise be valid, the whole will be void. If it should appear on the face of the award that the arbitrators, intending to decide a point of law, have fallen into an obvious mistake of the law, the award will be invalid. But where subjects involving questions both of law and fact are referred to arbitration, the arbitrators may make an award according to what they believe to be the justice of the case, irrespective of the law on any particular point.

When the submission to arbitration is not made the rule of any other court, the Court of Chancery, according to the ordinary principles of equity, has power to set aside the award for corruption or other misconduct on the part of the arbitrators, or if they should be mistaken in a plain point of law or fact. If the submission be made a rule of court under the above-mentioned statute of Will. III., the court of which it is made a rule has power to set aside the award, not only on the grounds of corruption or undue practice mentioned in the act, but also for mistakes in point of law; and no other court has a right to entertain any application for this purpose. The application to set aside the award must, however, be made within the time limited by the act. But although the time limited by that statute may have expired, yet, if there be any defect apparent on the face of the award, the court will not assist in carrying it into effect by granting an attachment for its non-performance. If the

submission to arbitration be made by rule or order of the court in any cause independently of the statute, the court still retains its ancient jurisdiction of setting aside the award on account either of the misconduct of the arbitrators, or of their mistake in point of law. In analogy, however, to the practice under the statute of Will. III., the court in ordinary cases requires application for setting aside the award to be made within the time limited by that statute; but upon sufficient grounds it will grant such an application, though made after the expiration of that time. Sometimes power is reserved to the court to refer the matter back to the arbitrators for further examination, in the event of any application being made to the court on the subject of the award. In this case the application must be made within the same time as an application to set aside the award.

If an umpire be appointed, his authority to make an award commences from the time of the disagreement of the arbitrators, unless some other period be expressly fixed; and if, after the disagreement of the arbitrators, he make an award before the expiration of the time given to the arbitrators to make their award, such award will nevertheless be valid. The umpire must be chosen by the arbitrators in the exercise of their judgment, and must not be determined by lot, unless all the parties to the reference consent to his appointment by such means. In order to enable him to form a proper decision, he ought to hear the whole evidence over again, unless the parties should be satisfied with his deciding on the statement of the arbitrators. And the whole matter in difference must

be submitted to his decision, and not some particular points only on which the arbitrators may disagree.

An award for the payment of money creates a debt from one party to the other, for which an action may be brought in any court of law. But when the award is made a rule of court, its performance may be enforced by attachment or execution. And where the reference is made by order of the Court of Chancery, or where the award requires any act to be done which cannot be enforced by an action at law, equity will decree a specific performance.

It often happens that the matters to be referred are of too complicated a nature to admit of a successful carriage without the intervention of a professional man. The foregoing observations and following forms are not intended to apply to any such cases: they are meant for plain and simple cases only.

Arbitration Deed.

THIS INDENTURE, made the day of , A. D. 18 , BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part. WHEREAS certain differences have arisen between the said A. B. and the said C. D. respecting, &c. [*here state concisely the subject-matter in dispute, or, if all matters in difference are referred, you had better not state such subject-matter at all*]; and it is agreed by and between the said A. B. and C. D. to refer the said difference [or *all matters in difference between them*] to the award, order, final end and determination of U. V., of, &c., and X. Z., of, &c., arbitrators, nominated by the said A. B. and C. D., respectively; and in case they dis-

agree about making an award, or fail to make an award, before the day of next, then to the award, umpirage, final end and determination of such umpire as the said arbitrators shall by writing under their hands, endorsed on these presents, before they enter upon the consideration of the matters referred, nominate and appoint.

NOW THIS INDENTURE WITNESSETH, that they, the said A. B. and C. D., do, and each of them for himself, severally and respectively, and for his several and respective heirs, executors, and administrators, doth covenant, promise, and agree with and to each other, his executors and administrators respectively, that the said differences [or *all matters in difference*] between the said A. B. and C. D. be forthwith referred to the award, order, arbitrament, final end and determination of the said U. V. and X. Z.; and in case they disagree about making an award, or fail to make an award, before the day of next then to the award, umpirage, final end and determination of such umpire as the said arbitrators shall by writing under their hands, endorsed on these presents, before they enter upon the consideration of the matters referred, nominate and appoint: so as the said arbitrators or umpire his or their award or umpirage make and publish in writing under his or their hands of and concerning the premises, ready to be delivered to the parties or to either of them, or, if they or either of them shall be dead before the making of the award or umpirage, to their respective personal representatives who shall require the same, on or before the day of next, or on or before any other

day to which the said arbitrators or umpire shall by any writing signed by him or them, endorsed on these presents, from time to time enlarge the time for making such award or umpirage; and that the said A. B. and C. D. respectively, and their respective executors and administrators, shall and will perform, fulfil, and keep the said award or umpirage so to be made as aforesaid, and that the death of either of the said parties shall not operate as a revocation of the power and authority of the said arbitrators or umpire to make said award or umpirage; and that all costs and charges of this reference and of the said award shall be in the discretion of the said arbitrators or umpire, who shall direct and award by whom and to whom and in what manner the same shall be paid: And, further, that the said A. B. and C. D., and each of them, shall and will produce unto and deposit with the said arbitrators or umpire all deeds, books, papers, evidences, and writings touching or relating to the matters in difference in their respective possessions or power as the said arbitrators or umpire shall think fit: And that each of them shall and will submit to be examined upon oath, if thought necessary by the said arbitrators or umpire, and will as far as in them lies respectively do all such other acts and things as the said administrators or umpire shall require for the better enabling him or them to make the said award: And, further, that if either of the said parties shall obstruct or prevent the said arbitrators or umpire from making an award by affected or wilful delay, or by not attending after reasonable notice, and without such excuse as the said arbitrators or umpire shall be

satisfied with and adjudge to be reasonable, it shall be lawful for the said arbitrators or umpire to proceed ex parte: And, further, that neither of them, the said A. B. and C. D., shall or will prosecute any action or suit in any court of law or equity against the other of them, or bring or prefer any bill in equity against each other of and concerning the premises until the said award be made and published: And, further, that this submission shall be made a rule of her majesty's court of , if that court shall so please: And, further, that the said arbitrators or umpires shall take the said arbitration at aforesaid, and shall have power to call for and examine all witnesses upon oath, and have the assistance of accountants in adjusting and ascertaining the state of the accounts of the said parties in difference.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

A. B. [L. S.]
C. D. [L. S.]

Signed, sealed, and delivered in the presence of
E. F.

ANOTHER FORM.

This Indenture, made the day of , in the year of our Lord one thousand eight hundred and , Between A. B., of, &c., of the first part, and C. D., of, &c., of the second part.

Whereas disputes and differences have arisen, and are now depending, between the said parties of the first and second parts in reference to [*state matters*

in dispute], and in order to put an end thereto, and to obtain an amicable adjustment thereof, the said parties of the first and second parts have respectively agreed to refer the same to the award, order, arbitrament, final end and determination of U. V., of, &c., and X. Z., of, &c., arbitrators, indifferently chosen, by and on behalf of the said parties respectively: And in the event of the said two arbitrators hereby appointed not being able to agree within one month from the date of these presents upon their said award, then it shall and may be lawful for them to appoint some fit person as third arbitrator, by a memorandum, in writing, under their hands, to be endorsed on these presents; and the award of any two of them shall be final and conclusive, both at law and in equity, upon both of the said parties hereto, such award to be made in writing on or before the day of next.

NOW THIS INDENTURE WITNESSETH, that the said parties hereto do, and each of them doth, each for himself severally and respectively, and for his and their respective heirs, executors, and administrators, COVENANT, PROMISE, AND AGREE, to and with each other, his and their heirs, executors, and administrators, well and truly to stand to, obey, abide by, observe, perform, fulfil, and keep the award, order, arbitrament, and final determination of the said arbitrators hereby appointed; or, in the event of it having been necessary to appoint such third arbitrator as aforesaid, to stand to, obey, abide by, observe, perform, fulfil, and keep the award, order, arbitrament, and final determination of any two of them of and concerning the premises aforesaid or any thing in any manner relating thereto,

so as the said award of the said arbitrators be made in writing under their hands, or under the hands of any two of them (in the event of any such appointment as aforesaid).

And it is hereby agreed, that the said arbitrators hereby appointed, or in the event of any such appointment being made as aforesaid, any two of them, shall be at liberty, by writing, under their hands, respectively endorsed on these presents, to enlarge the time for making the said award when and as often and to such times as they shall think fit. And also, that all the costs and charges attending the said arbitration shall be in the discretion of the said arbitrators hereby appointed, or in the event of such appointment of a third arbitrator as aforesaid, of any two of them so making their award as aforesaid, and shall be paid and satisfied pursuant to their award. And also, that these presents shall be made a rule of her majesty's Court of Queen's Bench or Common Pleas, at Toronto, to the end that the said parties respectively may be finally concluded by the said arbitration, pursuant to the statute in such case made and provided.

And for the full performance of the said award so to be made as aforesaid, the said parties hereto bind themselves, severally and respectively, their several and respective heirs, executors, and administrators, each to the other of them respectively, in the penal sum of lawful money of Canada, firmly by these presents.

In Witness Whereof, the said parties to these presents have hereunto set their hands and af-

fixed their seals, the day and year first above written.

A. B. [L. S.]
C. D. [L. S.]

Signed, sealed, and delivered in the presence of } E. F.

Arbitration Bond.

KNOW ALL MEN, That I, A. B., of, &c., am held and firmly bound to C. D., of, &c., in the sum of , of lawful money of Canada, to be paid to the said C. D. or to his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made I bind myself, my heirs, executors, and administrators forever, firmly by these presents.

SEALED with my seal. DATED this day of , in the year of our Lord one thousand eight hundred and .

WHEREAS disputes and differences have arisen, and are now pending, between the above-bounden A. B. and the said C. D. touching and concerning [*state subject-matter in dispute as in deed.*]

AND WHEREAS the above-bounden A. B. and the said C. D. have agreed to refer such disputes and differences, as well as all actions, suits, controversies, accounts, reckonings, matters, and things in any wise relating thereto, to the award, arbitrament, and determination of U. V. and X. Z., arbitrators nominated, appointed, and chosen, as well by and on the part and behalf of the above-bounden A. B. as of the

said C. D., and who have consented and agreed to accept the burthen of the said arbitration.

Now, THE CONDITION of the above-written bond or obligation is such, that if the above-bounden A. B. do and shall well and truly submit to, abide by, and perform, the award, arbitrament, and determination of the said arbitrators so nominated, appointed, and chosen as aforesaid, touching and concerning the matters in dispute between the above-bounden A. B. and the said C. D. and so referred to them, the said arbitrators as aforesaid (provided such award be made in writing under the hands and seals of the said arbitrators, ready to be delivered to the said parties, or such of them as shall apply for the same, on or before the day of , in the year of our Lord one thousand eight hundred and) THEN this obligation shall be void, otherwise to be and remain in full force and virtue. AND the said obligor hereby consents and agrees that this Bond of Submission and the award to be made thereunder shall and may be made a rule of court of any of the superior courts of this Province.

A. B. [L. S.]

Signed, sealed, and delivered in the presence of }
E. F.

Appointment of an Umpire.

We, the within-named U. V. and X. Z., do hereby nominate and appoint U. U., of , to be umpire between us in and concerning the matters in difference within referred [on condition that he do, within

days from the date hereof, by some writing under his hand, accept the umpirage].

WITNESS our hands this day of , A. D. .

U. V.

X. Z.

Witness, W. W.

Enlargement of Time for making Award.

We, the undersigned arbitrators, by virtue of the power to us given for this purpose, do hereby appoint, extend, and [*if a second enlargement*, "further"] enlarge the time for making our award until the day of next, on or before which said day our award in writing of and concerning the matters in difference within mentioned and referred to us shall be made and published.

IN WITNESS WHEREOF, we have set our hands the day of , A. D. .

A. B.

C. D.

Witness, W. W.

Enlargement of Time by the Parties.

We, the within-named A. B. and C. D., for ourselves severally and respectively, and for our several and respective heirs, executors, and administrators, do hereby give, grant, and allow unto the within-named arbitrators further time for making their award of and concerning the several matters within referred to them, until the day of next.

IN WITNESS WHEREOF, we have hereunto set our hands [*or, if the submission was by bond or deed, say,*

"our hands and seals"], the day of , A. D. .

A. B.
C. D.

Witness, W. W.

Appointment of Third Person as additional Arbitrator.

We, the within-named U. V. and X. Z., do, by this *memorandum* under our hands [made before we enter or proceed on the arbitration within mentioned] nominate and appoint Mr. X. Y., of , the third person or arbitrator, to whom, together with ourselves, all matters in difference between the said parties within mentioned shall be referred, according to the tenor and effect of the within [deed].

Witness our hands this day of , 186 .

U. V.
X. Z.

Signed in the presence of
Y. Z.

Oath to be administered by Arbitrator to a Witness.

You shall true answer make to all such questions as shall be asked of you by or before me touching or relating to the matters in difference between A. B. and C. D. referred to my award [*or* "to the award of myself and G. H."], without favor or affection to either party; and therein you shall speak the truth, the whole truth, and nothing but the truth.

So help you God.

Appointment by Arbitrator for Attendance before him.

B. v. D. } I appoint , the day of next, at o'clock in the evening, at , for proceeding in this reference. Dated the day of , A. D. 186 .

A. A.

To Messrs. A. B. and C. D., and their respective attorneys or agents, and all others whom it may concern. } (*The arbitrator's signature, or the signature of one or more of them, if more than one.*)

Peremptory Appointment for the same purpose.

I appoint , the day of instant [*or* "next"], at o'clock in the noon precisely, at , peremptorily to proceed upon and conclude the reference now pending before me between A. B. and C. D.: And I hereby give notice, that in case of non-attendance of either party, I shall nevertheless proceed, and immediately make my award, according to the statute in that case made and provided. Dated the day of , A. D. .

E. F., *Arbitrator.*

To Messrs. A. B. and C. D., and their respective attorneys or agents, and all others whom it may concern.

General Form of Award.

To all to whom these presents shall come, I, A. A., of , send greeting: [&c. *proceed to recite the instrument by which the parties referred to arbitration, and so much of its terms as may be essential to show*

the authority of the arbitrator or umpire with respect to the subject-matter of reference, and the time, power of enlargement, and manner of making the award. Thus, if it be by indenture, the recital may be thus: "Whereas by an indenture bearing, &c., and made between, &c., reciting that various differences had arisen, &c.," *so stating all that may be material to warrant the following award, and then proceed thus:*] Now know ye that I, the said A. A., having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference and so referred as aforesaid, do make this my award in writing of and concerning the said matters in difference so referred, and do hereby award, order, determine, and direct that [&c. *conclude with a distinct statement of the arbitrator's decision on all the points referred to him*].

Witness, W. W. A. A.

Award where the Submission was by mutual Bonds.

To all to whom these presents shall come, I, A. A., of , send greeting: Whereas on , by a bond made and sealed with the seal of C. D., of , he became held and firmly bound unto A. B. in the penal sum of : And whereas on the day and year aforesaid the said A. B., by another bond sealed with his seal, become held and firmly bound unto the said C. D. in the like penal sum, with conditions written under the said several bonds that the said A. B., his heirs, executors, and administrators, and the said C. D., his heirs, executors, and adminis-

trators, should well and truly stand to, abide by, perform, fulfil, and keep the award, order, and final end and determination of me, A. A., an arbitrator indifferently named and elected, as well on the part and behalf of the above-bounden A. B. as of the above-bounden C. D., to arbitrate, award, order, judge, and determine of and concerning [&c. *here set out such parts of the bond as bear upon the award, and state the enlargement, if any*]. Now I, the said A. A., having taken upon myself the burthen of the said arbitration, and having heard and duly and maturely weighed and considered the several allegations, vouchers, and proofs in difference respectively, do in pursuance of the said submission make and publish this my award of and concerning the said premises in manner following; that is to say, I do award [&c.].

In Witness, &c. A. A.

Witness, W. W.

Award where the Submission was by Agreement, and stating an Assent for an Enlargement.

To all to whom these presents shall come, we, A. A. and T. A., of , send greeting: Whereas on by a certain agreement in writing under the hands [and seals] of A. B., of , and C. D., of , bearing date on or about the day of last, reciting that [&c. *here set out the recital and such parts of the agreement as bear upon the award:*] And whereas by an endorsement on the said agreement, bearing date on or about the day of last past, and under the hands of all the said parties to

the said agreement, they the said parties mutually and reciprocally consented and agreed that the time for the said arbitrator's making the said award should be enlarged to the day of then next, and that they would in all other respects abide by the terms of the said agreement. Now know ye that we the said arbitrators having taken upon us the burthen of the said reference, and having examined all such witnesses as were produced before us by the said parties respectively, and having fully weighed and considered all the allegations, proofs, and vouchers made and produced before us, do award [&c.].

In Witness, &c. A. A.

Witness, W. W.

Award that each Party shall pay his own Costs, and that one shall pay the Costs of the Reference, and that the other shall afterwards pay him half thereof.

And I do further award, order, and determine that each of them the said A. B. and C. D. shall bear and pay his own costs incurred by him in and about the said submission and reference, and that the sum of , being the amount of the other costs attending the said submission and reference, and of the making of this award, shall be paid by the said A. B. to me A. A. upon demand, and that the sum of , being one moiety of the said sum of shall, after such aforesaid payment by the said A. B. be paid by the said C. D. to the said A. B. upon demand.

Affidavit of Execution of Arbitration Bond.

County of , } I, Y. Z., of, &c., make oath and
to wit: } say,

1. That I was present and did see the annexed Arbitration Bond duly signed, sealed, and delivered by the therein-named A. B., and that I am the subscribing witness to the execution of the said bond.

Y. Z.

Sworn before me, at , in the county of , this day of , 18 , E. F., a Commissioner, &c., in B. R. for County of .

If the affidavit is intended for use in a court of law, it must be entitled in the court.

An affidavit of execution of award can easily be framed from the above.

CHAPTER IV.

Of Assignments.

An assignment, in its general acceptation, is the transfer of any kind of property, whether real or personal. The person making the assignment is called the *assignor;* he to whom the assignment is made, the *assignee.*

An assignment of land, or of any interest in land, should be registered in the county registry office. An assignment of goods and chattels, whether absolute, as a bill of sale, or conditional, as a chattel mortgage, not accompanied by immediate delivery and followed by an actual and continued change of possession, requires to be filed in the office of the clerk of the county court of the county wherein the goods are. See Cons.: Stat. U. C., cap. 45, ss. 1–4.

An assignment requires to be executed with the same formalities as other deeds. For a longer notice of these formalities the reader may refer to the chapter upon Deeds.

The following forms will be found to meet cases of common occurrence. In matters of difficulty the services of a professional man should be procured.

Assignment of Agreement to Purchase.

(*To be endorsed upon or annexed to the Original.*)

WHEREAS the within-named C. D. hath duly paid to the within-named A. B. the sum of $, being the amount of the first two instalments of the purchase money within-mentioned, together with all interest upon such purchase money up to the day of last, according to the terms and provisions of the within-written articles, and there now remains to be paid the sum of $ only, by equal annual instalments of $ each, with interest from the day of last. AND WHEREAS the said C. D. hath contracted and agreed with E. F., of , for the sale to him of the within-mentioned premises [and the improvements thereon] and all his right and title thereto and estate and interest therein under or by virtue of the within-written agreement, at the price or sum of $, but subject nevertheless to the payment by him, the said E. F., his heirs, executors, or administrators, unto the said A. B., his executors or administrators, of the said sum of $, residue of the original purchase money aforesaid, and interest thereon from the period aforesaid.

NOW THESE PRESENTS WITNESS, that in pursuance of such agreement and in consideration of the sum of $, of good and lawful money aforesaid, to him, the said C. D., in hand paid by the said E. F. at or before the execution hereof, the receipt whereof he, the said C. D., doth hereby acknowledge, he, the said C. D., hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant,

bargain, sell, assign, transfer, and set over unto the said E. F., his heirs and assigns, ALL AND SINGULAR the within-mentioned and described parcel or tract of land and premises, and therein described as being lot No. in the concession of , together with all the right, title, and interest of him, the said C. D., of, in, and to the within-written articles of agreement covenants, and the lands and premises therein referred to, and all improvements thereon, and all benefit and advantage to arise therefrom, or from the penal sum of $ thereby secured: TO HAVE AND TO HOLD, receive and enjoy, the said assigned premises unto the said E. F., his heirs, executors, administrators, and assigns, from henceforth, for his and their own use and benefit forever.

AND THE SAID C. D. doth hereby make, ordain, authorize, constitute, and appoint the said E. F., his heirs, executors, administrators, and assigns, his true and lawful attorney and attorneys, irrevocable for him, the said C. D., and in his name, but for the sole use and benefit of the said E. F., his heirs, executors, and administrators, to demand, sue for, recover, and receive of and from the within-named A. B., his heirs, executors, or administrators, all such sum or sums of money and damages as shall or may at any time or times hereafter accrue or grow due to him, the said C. D., his heirs, executors, administrators, or assigns, under or by virtue of the said recited articles of agreement and covenants, or any matter, clause, or thing therein contained, by reason or on account of the breach or default of him, the said A. B., his heirs, executors, or administrators, in relation thereto; the

said C. D. hereby also COVENANTING with the said E. F., his heirs, executors, and administrators, that he hath not done or suffered, nor will he do or suffer any act, matter, or thing whereby the said E. F., his heirs, executors, or administrators, shall or may be hindered or prevented from commencing and prosecuting any action or actions, suit or suits at law or in equity, for the recovery of any principal money or damages under or by virtue of the said articles of agreement and covenants referred to, or enforcing the performance of the said articles of agreement, or obtaining such other satisfaction as can or may be had or obtained for the same by virtue thereof; AND THE SAID E. F. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs, executors, and administrators, that he, the said E. F., his heirs, executors, or administrators, shall and will well and truly pay to the said A. B., his executors or administrators, the aforesaid sum of $, residue of the purchase money aforesaid, and all the interest thereon now or hereafter to become due, by the instalments and at the times mentioned and provided therefor in and by the said recited articles of agreement, and therefrom shall and will indemnify and forever save harmless the said C. D., his heirs, executors, and administrators, and his and their goods and chattels, lands and tenements, by these presents.

IN WITNESS, &c.

Signed, &c.

Assignment of a Bond by Endorsement.

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of , of good and lawful money of Canada, by E. F., of , to the within-mentioned obligee, C. D., in hand well and truly paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said C. D., HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over, unto the said E. F., his executors, administrators, and assigns, the within-written bond or obligation, and all principal and interest money thereby secured, and now due or hereafter to become due thereon, and all benefit and advantage whatever to be had, made, or obtained by virtue thereof, and all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him, the said C. D., of, in, to, or out of the said bond and moneys, together with the said bond. To HAVE, HOLD, receive, and enjoy the said bond and moneys unto the said E. F., his executors, administrators, and assigns, from henceforth, for his and their own use and benefit forever; AND THE SAID C. D. doth hereby make, constitute, and appoint, and in his place and stead put and place, the said E. F., his executors, administrators, and assigns, the true and lawful attorney and attorneys irrevocable of him, the said C. D., in his name, but to and for the sole use and benefit of the said E. F., his executors, administrators, and assigns, to ask, demand, and receive of and from the within-named A. B., the obligor in the within-

written bond or obligation named, his heirs, executors, administrators, or assigns, all such principal and interest moneys as now are or shall from time to time or at any time hereafter be due upon the said bond, and to sue and prosecute any action, suit, judgment, or execution thereupon, and to acknowledge, make, and give full satisfaction, receipts, releases, and discharges for all moneys secured by the said bond and now due or at any time hereafter growing due thereon, and generally to do all and every such further and other lawful acts and things, as well for the recovering and receiving as also for the releasing and discharging of all and singular the said hereby assigned bond, moneys, and premises, as fully and effectually to all intents and purposes as he, the said C. D., his executors, administrators, or assigns, could or might do if personally present and doing the same. AND THE SAID C. D. doth hereby, for himself, his executors and administrators, covenant with the said E. F., his executors, administrators, and assigns, to ratify, allow, and confirm all and whatsoever the said E. F., his executors, administrators, or assigns, shall lawfully do or cause to be done in or about the premises by virtue of these presents. AND THE SAID C. D., for himself, his executors and administrators, doth further covenant, promise, and agree to and with the said E. F., his executors, administrators, and assigns, by these presents, in manner following, that is to say: that the within-mentioned sum of remains justly due and owing upon the said bond, and that he, the said C. D., hath not received or discharged all or any of the said moneys due or to grow due on the said bond, nor shall or will release,

nonsuit, vacate, or disavow any suit or other legal proceedings to be had, made, or prosecuted by virtue of these presents, for the suing for, recovering, releasing, or discharging of the said moneys or any of them, without the license of the said E. F., his executors, administrators, or assigns, first had and obtained in writing, nor shall or will revoke, invalidate, hinder, or make void these presents, or any authority or power hereby given, without such license as aforesaid.

In Witness, &c.

Assignment (Crown Lands).

Know all Men by these Presents, that I , of the of , in the County of and Province of Canada, for and in consideration of the sum of , of lawful money of the said Province, to in hand paid by , of the of , in the County of and Province aforesaid, at or before the date hereof, the receipt whereof do hereby acknowledge, have bargained, sold, assigned, transferred, and set over, and by these presents do bargain, sell, assign, transfer, and set over to the said , heirs and assigns, all estate, right, title, interest, claim, and demand whatsoever, both at law and in equity, of, in, and to that certain parcel or tract of land and premises situate, lying and being in the township of , in the County of and Province aforesaid, containing by admeasurement acres, be the same more or less, being composed of Lot number in the Concession of the Township aforesaid [insert, if necessary, "subject to the conditions, as to

settlement and otherwise, of the Crown Lands Department, which are to be performed."]

To HAVE AND TO HOLD the same, with all and every the benefit that may or can be derived from the said acres of land, unto the said , heirs and assigns, forever.

In WITNESS WHEREOF, have hereunto set hand and seal, this day of , in the year of our Lord one thousand eight hundred and

Signed, sealed and delivered } in presence of }

CANADA. County of , to wit: , of the Township of , in the County of , maketh oath and saith, that he was personally present and did see the within-named duly sign and seal, and as act and deed deliver, the within Assignment on the day of the date thereof, and that he, this deponent, is a subscribing witness thereto.

Sworn before me, at , } this day of , 18 . }

A. B.,
a Commissioner for taking Affidavits in and for the said county.

Assignment of Lease.

This Indenture, made the day of , in the year of our Lord one thousand eight hundred and BETWEEN , of the first part, and , of the second part. WHEREAS, by an Indenture of Lease, bearing date on or about the day of , in the year of our Lord one thousand eight hundred and

, and made between , the said lessor therein named did demise and lease unto the said lessee therein named, executors, administrators, and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises, situate, lying, and being in the TO HOLD the same, with the appurtenances, unto the said lessee, executors, administrators, and assigns, from the day of , in the year of our Lord one thousand eight hundred and , for and during the term of years from thence next ensuing, and fully to be complete and ended at the yearly rent of and under and subject to the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of , of lawful money of Canada, now paid by the said part of the second part to the said part of the first part (the receipt whereof is hereby acknowledged), the said part of the first part DO hereby grant, bargain, sell, assign, transfer, and set over unto the said part of the second part, executors, administrators, and assigns, ALL AND SINGULAR the said parcel or tract of land, and all other the premises comprised in, and demised by, the said hereinbefore in part recited Indenture of Lease, TOGETHER with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom: TO HAVE AND TO HOLD the same, together with all houses and other buildings, easements, privileges, and appurtenances thereunto belonging or in any wise appertaining, unto the said part of the

second part, executors, administrators, and assigns, from henceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term, right of renewal (if any), and other the interest of the said part of the first part therein; SUBJECT to the payment of the rent and the observance and performance of the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

AND the said part of the first part do hereby, for heirs, executors, and administrators, covenant, promise, and agree, to and with the said part of the second part, executors, administrators, and assigns, in manner following, that is to say:

THAT notwithstanding any act of the said part of the first part, the said hereinbefore in part recited Indenture of Lease is, at the time of the sealing and delivery of these presents, a good, valid, and subsisting Lease in the law, and not surrendered, forfeited, or become void or voidable; and that the rent and covenants therein reserved and contained have been duly paid and performed by the said part of the first part up to the day of the date hereof.

AND that, notwithstanding as aforesaid, the said part of the first part now ha in good right, full power, and lawful and absolute authority to assign the said lands and premises, in manner aforesaid, and according to the true intent and meaning of these presents.

AND that, subject to the said rent, and the lessee's covenants and agreements in the said lease contained, it shall be lawful for the said part of the second

part, executors, administrators, and assigns, to enter into and upon and hold and enjoy the said premises the residue of the term granted by the said Indenture of Lease, and any renewal thereof (if any), for their own use and benefit, without the let, suit, hindrance, interruption, or denial of the said part of the first part, executors, administrators, or assigns, or any other persons claiming under , and that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by and at the expense of the said part of the first part, heirs, executors, and administrators, well and effectually saved, defended, and kept harmless, of, from, and against all former and other gifts, grants, bargains, sales, leases, and other incumbrances whatsoever, of the said part of the first part, or any persons claiming under .

And that the said part of the first part, heirs, executors, administrators, and assigns, and all other persons claiming any interest in the said premises, under or them, shall and will, from time to time, and at all times hereafter, at the request and cost of the said part of the second part, executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further assignments and assurances in the law of the said premises for more effectually assigning and assuring the said premises for the residue of the said term, and any renewal thereof (if any), as by the said part of the second part, executors, administrators, or assigns, or counsel in the law, shall be reasonably advised or required.

And the said part of the second part do hereby, for heirs, executors, administrators, and assigns, covenant, promise, and agree, to and with the said part of the first part, executors and administrators, that he or they, the said part of the second part, executors, administrators, or assigns, shall and will, from time to time, during all the residue of the said term granted by the said Indenture of Lease, pay the rent, and perform the lessee's covenants and agreements therein respectively reserved and contained, and indemnify and save harmless the said part of the first part, heirs, executors, and administrators, therefrom, and from all actions, suits, costs, losses, charges, damages, and expenses in respect thereof.

In Witness Whereof, the said parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of }

Received, on the date hereof, the sum of , being the full consideration above mentioned.

In presence of

Assignment of Lease.

SHORTER FORM.

This Indenture, made the day of , in the year of our Lord one thousand eight hundred and , Between , of the first part, and , of the second part, Witnesseth, that in consideration of the sum of now paid by the said part of the second part to the said part of the first

part, the receipt whereof is hereby acknowledged, the said part of the first part, Do hereby grant and assign unto the said part of the second part, executors, administrators, and assigns, ALL and singular the premises comprised in and demised by a certain Indenture of Lease, bearing date the day of , in the year of our Lord one thousand eight hundred and , and made between , which said premises are more particularly known and described as follows, that is to say: ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being , together with the appurtenances, To HOLD the same unto the said part of the second part, executors, administrators, and assigns, henceforth for and during the residue of the term of years from the day of , 18 , thereby granted, and for all other the estate, term, and interest (if any) of the said part of the first part therein. Subject to the payment of the rent and the performance of the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

And the said part of the first part, for heirs, executors, and administrators, do hereby covenant with the said part of the second part, executors, administrators, and assigns, that notwithstanding any act of the said part of the first part, ha now power to assign the said premises in manner aforesaid. And that subject to the payment of the said rent, and the performance of the said lessee's covenants, it shall be lawful for the said part of the second part, executors, administrators, and assigns, peaceably and quietly to hold and enjoy the said pre-

mises hereby assigned during the residue of the term granted by the said Indenture of Lease, without any interruption by the said part of the first part, or any other persons claiming under , free from all charges and incumbrances whatsoever, of the said part of the first part. And that the said part of the first part, and all persons lawfully claiming under , will, at all times hereafter, at the request and costs of the said part of the second part, executors, administrators, and assigns, assign and confirm to and them the said premises for the residue of the said term as the said part of the second part, executors, administrators, or assigns, shall direct.

And the said part of the second part, for heirs, executors, and administrators, Do hereby covenant with the said part of the first part, executors and administrators, that , the said part of the second part, executors, administrators, or assigns, will, from time to time, pay the rent and perform the lessee's covenants in the said Indenture of Lease, and indemnify and save harmless the said part of the first part, heirs, executors, and administrators, from all losses and expenses in respect thereof.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of }

Assignment of Lease by Administrator.

Know all men by these Presents, that A. B., of , administrator of all and singular the goods and

chattels, rights and credits, of the within-named C. D. deceased, for and in consideration of the sum of , of good and lawful money of Canada, to him in hand well and truly paid by E. F., of , at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath (by and with the consent of the within-named A. B., testified by his executing these presents) bargained, sold, assigned, transferred, and set over, and by these presents doth (by and with such consent as aforesaid) bargain, sell, assign, transfer, and set over, unto the said E. F., his exs., ads., and assigns, all and singular the parcel or tract of land and premises comprised in the within-written indenture of lease, and all the estate, right, title, and interest which he, the said A. B., as administrator of the said C. D. as aforesaid, or otherwise, now hath, or at any time hereafter shall or may have, claim, challenge, or demand, of, in, or to, all or any of the said premises, by virtue of the said indenture of lease or otherwise, as administrator of the said C. D. TO HAVE AND TO HOLD the said parcel or tract of land, and all and singular other the premises, with their and every of their appurtenances, unto the said E. F., his exs., ads., and assigns, for and during all the rest, residue, and remainder yet to come and unexpired, of the within-mentioned term of years, subject, nevertheless, to the yearly rent of in and by the said indenture of lease reserved and contained, and to become due and payable, and to all and every the covenants, clauses, provisoes, and agreements therein contained. AND THE SAID A. B., for himself, his heirs, exs., and ads., doth hereby covenant

and declare to and with the said E. F., his exs., ads., and assigns, that he, the said A. B., hath not at any time heretofore made, done, committed, or executed, or wittingly or willingly permitted or suffered, any act, deed, matter, or thing whatsoever, whereby or wherewith, or by means whereof, the said parcel or tract of land and premises hereby assigned, are, is, can, shall, or may be any ways impeached, charged, affected, or incumbered in title, estate, or otherwise, however.

In Witness, &c.

Assignment from Trader to Secure Debt.

This Indenture, made the day of , in the year of our Lord one thousand eight hundred and , Between of the first part, wi of the said , of the second part, and of the third part.

Whereas the said part of the first part is justly and truly indebted unto the said part of the third part in the sum of or thereabouts, and hath agreed to execute unto the said part of the third part, an assignment of all his estates and interest in the real and personal estate and effects hereinafter mentioned, for the purpose of paying thereout or securing the payment of such indebtedness.

Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of five shillings of lawful money of Canada, to the said part of the first part paid by the said part of the third part, at or before the execution of these presents (the receipt whereof is hereby ac-

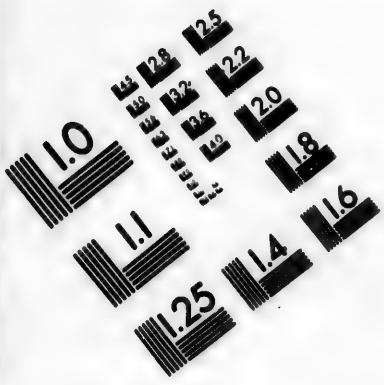
knowledged), , the said part of the first part, Ha granted, bargained, sold, released, conveyed, assigned, transferred, and assured, and by these presents Do grant, bargain, sell, release, convey, assign, transfer, and assure, unto the said part of the third part, heirs, executors, administrators, and assigns, All and singular the real estate specified in the Schedule to these presents marked A, and all the household goods, books, credits, furniture, stock in trade, bonds, bills, notes, books of account, and securities for money, and all other the personal estate and effects, now belonging, due, or owing to him the said part of the first part, the greater part of which are now in and upon the premises upon which the said part of the first part now carries on his said business, and are specified in the Schedule to these presents marked B; and which said goods are forthwith, upon the execution of these presents, to be delivered into the possession of the said part of the third part, or agent or agents in that behalf; and all reversions, remainders, rents, issues, and profits, and all the right, title, interest, trust, possession, property claim, and demand whatsoever, at law or in equity, of the said part of the first part, of, in, to, out of, or upon the same real and personal estate, goods, chattels, effects, and property, respectively. Together with the appurtenances, and together with all books, writings, deeds, bills, notes, and receipts, papers and vouchers, touching or concerning the said premises hereby assigned, or any part thereof.

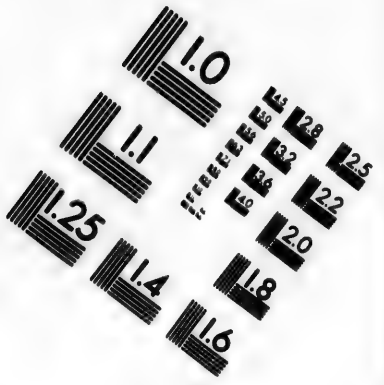
To HAVE AND TO HOLD, receive, take, and enjoy, the said real and personal estate, goods, chattels,

stocks, moneys, credits, bonds, bills, notes, securities for money, and all and singular other the premises hereby conveyed and assigned, or intended so to be, unto the said part of the third part, heirs, executors, administrators, and assigns, henceforth forever, to and for sole and only use, and as and for own proper goods, chattels, moneys, and effects absolutely.

SUBJECT NEVERTHELESS, and to and for the intents and purposes following, that is to say:

THAT the said part of the third part, or agent or agents in that behalf, do and shall with all convenient speed sell and dispose of the said real and personal estate, stock, chattels, and effects, either together or in parcels, and either by public auction or private contract, for the best price or prices that can be reasonably obtained for the same, and either for ready money or for credit or otherwise, as shall be deemed most beneficial, the receipts of the said part of the third part being sufficient discharges for the same, and do and shall receive, collect, and get in all and singular the credits and sums of money hereby assigned or intended so to be, and apply the said moneys to arise by such sale or sales, and to be received or collected as aforesaid, after payment of all costs, charges, and expenses of these presents, and incidental thereto, and in carrying out the purposes thereof, or otherwise in relation thereto, in and towards the payment and liquidation in full of the said indebtedness of the said part of the first part to the said part of the third part, and after such payment do and shall pay the residue and surplus, if any, to





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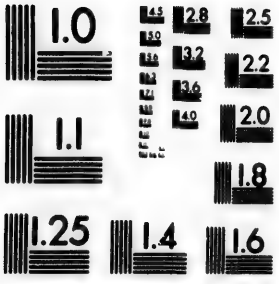

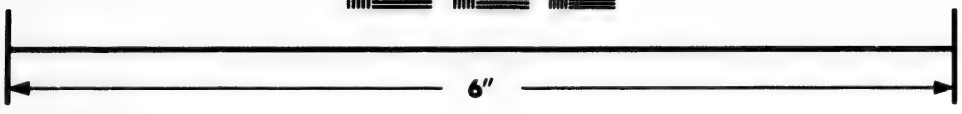

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the said part of the first part, his executors, administrators, or assigns, or as shall direct.

And for the better carrying out of these presents, the said part of the first part do hereby nominate and appoint the said part of the third part, executors, administrators, and assigns, the true and lawful attorney and attorneys of , the said part of the first part, for and in name to do, perform, and execute all such acts, deeds, matters, and things whatsoever in relation to all and singular the real and personal estate and effects and premises hereby assigned as aforesaid, as the said part of the third part may deem necessary for more effectually carrying into effect the true intent and meaning hereof; and that for the purposes aforesaid it shall be lawful for the said part of the third part, servants and agents, to continue in and to occupy the said premises now in the occupation of the said part of the first part, until the trusts of this assignment are fully executed.

Provided also, that any collateral or other securities, by way of judgments or otherwise, which the said part of the third part now hold against the said part of the first part in respect of said indebtedness or any part thereof, shall not be prejudiced or affected by this assignment, or otherwise than by payment of such indebtedness out of the proceeds to arise hereunder.

And provided, further, that the said part of the third part shall not be answerable or chargeable as implied trustee hereunder, except for wilful neglect or default, but no further or otherwise.

And the said part of the second part wi of the said, with the privity and consent of said husband, in consideration of five shillings to paid by the said part of the third part, hereby release unto the said part of the third part all dower, and right or title to dower, in the said lands hereby conveyed and every part thereof.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of . }

Assignment of Judgment.

This Indenture, made the day of , in the year of our Lord one thousand eight hundred and , Between , of the first part, and , of the second part.

Whereas the said part of the first part, on or about the day of , one thousand eight hundred and , recovered a judgment in the Court of for Upper Canada, at Toronto, for the sum of against .

And whereas the said part of the first part hath agreed to assign the said judgment, and all benefit to arise therefrom, either at law or in equity, unto the said part of the second part, in manner hereinafter expressed.

Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of , of lawful money of Canada, to the said part of the first part in hand paid by the said part of the second part, at or before the execution

hereof, the receipt whereof is hereby acknowledged, the said part of the first part, HA granted, bargained, sold, and assigned, and by these presents DO grant, bargain, sell, and assign, unto the said part of the second part, executors, administrators, and assigns, ALL THAT the said hereinbefore mentioned judgment, and all benefit to be derived therefrom, either at law or in equity, or otherwise howsoever.

TO HOLD, receive, and take the same, and all benefit and advantage thereof, to and for his and their own proper use, and as and for his and their own proper moneys and effects, absolutely.

AND THE SAID part of the first part hereby constitutes and appoints the said part of the second part, executors and administrators, to be true and lawful attorney and attorneys, at the proper costs and charges of the said part of the second part, executors and administrators, to take and prosecute all and every remedy or proceeding at law or in equity, which the said part of the second part, executors or administrators, shall hereafter consider advisable in reference to the said judgment, the said part of the second part, for heirs, executors, and administrators, hereby agreeing to indemnify and save harmless the said part of the first part, heirs, executors, and administrators, of and from all damages, costs, charges, and expenses in respect thereof.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of }

Assignment of Judgment.

SPECIAL FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN the Bank of , of the one part, and A. B., of , of the other part.

WHEREAS the said Bank, on the day of in the year of our Lord one thousand eight hundred and , obtained a judgment in her majesty's Court of Queen's Bench for Upper Canada, at Toronto, against C. D., of , and E. F., of , for the sum of damages and costs, making together the sum of .

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of , of lawful money of Canada, to the said Bank in hand well and truly paid by the said A. B. at or immediately before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, the said Bank hath granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over, unto the said A. B., his executors, administrators, and assigns, ALL that the said judgment debt or sum of and all and every sum and sums of money now due and hereafter to grow due by virtue thereof, for principal, interest, and costs. AND ALSO the said judgment and all other securities for the said debt, and the full benefit and advantage thereof. TO HAVE, HOLD, RECEIVE, AND ENJOY the said judgment debt and premises hereby assigned, or intended so to be, unto the said

A. B., his executors, administrators, and assigns, henceforth, to his and their own proper use and behoof, as his and their proper goods and chattels forever. And for the purpose of enabling the said A. B., his executors, administrators, or assigns, to receive and enforce payment of the judgment debt and premises hereby assigned, the said Bank doth make, ordain, constitute, and appoint the said A. B., his executors and administrators, the true and lawful attorney and attorneys of the said Bank, in the name of the said Bank, but at the costs and charges of the said A. B., his executors or administrators, to ask, demand, and receive of and from the said C. D. and E. F., their executors or administrators, the judgment debt and premises hereby assigned, and on non-payment of the same or any part thereof to obtain any execution or executions, or bring, commence, and prosecute any action or actions, suit or suits, as well at law as in equity, for the recovery of the same, and to use all such other lawful remedies, ways, and means as the said Bank could or might have used or taken for the recovery of the same, and, on receipt or recovery thereof, to sign and give a good and effectual receipt or receipts for the same, with full power from time to time to appoint a substitute or subtitutes for all or any of the purposes aforesaid; and the said Bank doth hereby agree to ratify and confirm whatsoever the said A. B., his executors or administrators, shall lawfully do or cause to be done in or about the premises. And the said A. B. hereby covenants to indemnify and save harmless the said Bank from all loss, costs,

charges, damages, and expenses, by reason or on account of any such proceedings as aforesaid.

IN WITNESS WHEREOF, , of , Esquire, President of the said Bank, hath hereunto set his hand and affixed the common seal of the said Bank, and the said A. B. hath hereunto set his hand and seal, the day and year first above written.

Assignment of Mortgage.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN [assignor], of the first part, and [assignee], of the second part.

WHEREAS, by Indenture bearing date the day of , in the year of our Lord one thousand eight hundred and , and made between and the said assignor of the part; in consideration of the sum of paid by the said assignor to the said , HE, the said , did grant, bargain, sell, release, convey, and confirm unto the said assignor, his heirs and assigns, ALL .

TO HOLD the same unto the said assignor, his heirs and assigns forever; SUBJECT, NEVERTHELESS, to a proviso or condition therein contained for making the same void on payment by the said , his heirs, executors, administrators, or assigns, of the sum of , with interest, in manner and at the times following, that is to say: ,

AND WHEREAS there is now due on the said mortgage the sum of for principal and interest.

AND WHEREAS, the said assignor having occasion for the said sum of , the said assignee hath agreed

to advance the same to him upon having a transfer and assignment of the said mortgage debt, premises, and securities made to him, the said assignee, in manner hereinafter expressed.

NOW THIS INDENTURE WITNESSETH that in consideration of the said sum of paid by the said assignee to the said assignor, at or immediately before the sealing and delivery of these presents, the receipt whereof the said assignor doth hereby acknowledge, and therefrom doth release and discharge the said assignee, his heirs, executors, administrators, and assigns, HE, the said assignor, DOTH by these presents bargain, sell, and release unto the said assignee, his heirs and assigns, ALL AND SINGULAR the land, premises, and hereditaments comprised in the hereinbefore recited Indenture of Mortgage, and hereinbefore described, together with their and every of their rights, members, and appurtenances; AND ALL the estate, right, title, interest, trust, property, claim, and demand, whatsoever, at law and in equity, of him the said assignor, in, to, or upon the land, and every part thereof; AND ALSO all deeds, evidences, and writings, whatsoever, relating to or concerning the same hereditaments and premises, or any part thereof, which he, the assignor, now hath in his custody or possession or can or may obtain without suit at law or in equity; TO HAVE AND TO HOLD the said land and premises, and all and singular other the hereditaments hereinbefore expressed to be hereby released unto the said assignee, his heirs and assigns, TO THE USE of the said assignee, his heirs and assigns, forever: SUBJECT, NEVERTHELESS, to such right or equity of

redemption on payment by the said , his heirs, executors, administrators, or assigns, of the said sum of , as is or may be now subsisting under or by virtue of the hereinbefore recited Indenture of Mortgage.

And this Indenture further witnesseth that, for the consideration aforesaid, He, the said assignor, Doth by these presents bargain, sell, assign, and transfer unto the said assignee, his executors, administrators, and assigns, All that the sum of now due as aforesaid on the said mortgage, with the interest to become due thereon; And also all the right, title, interest, property, claim, and demand whatsoever, at law and in equity, of him the said assignor, of, in, to, or out of the same and every part thereof, To have, receive, take, and enjoy the said last-mentioned sum and interest, and all other the premises lastly hereinbefore expressed, to be hereby assigned unto and by the said assignee, his executors, administrators, and assigns, as and for his and their own proper goods and chattels forever.

And for the better enabling the said assignee, his executors, administrators, or assigns, to recover and receive the sum of hereby assigned, and the interest thereon, He, the said assignor, Doth by these presents constitute and appoint the said assignee, his executors and administrators, the true and lawful attorney and attorneys irrevocable of him the said assignor, for him and in his name, or in the name or names of his executors or administrators, but for the benefit and at the costs and risk of him the said assignee, his executors, administrators, or assigns, to ask,

demand, and recover, by all lawful ways and means, of and from the said , his heirs, executors, or administrators, and all and every other person and persons liable to pay the same, the said sum of secured by the said mortgage as aforesaid, and all interest now due, and hereafter to grow due for the same; AND in case of non-payment thereof, or of any part thereof, to commence and prosecute such actions or suits at law or in equity, or to take such proceedings for the recovery of the same, as shall be thought expedient, and on payment or receipt thereof, or of any part thereof, to give sufficient releases and discharges for the same; AND for the purposes aforesaid, the said assignor doth hereby grant unto the said assignee, his executors and administrators, power and authority to appoint a substitute or substitutes, and such substitution from time to time at pleasure to revoke; AND doth hereby ratify and confirm all and whatsoever the said assignee, his executors or administrators, or his or their substitute or substitutes, shall lawfully do or cause to be done in the premises, by virtue of these presents.

AND the said assignor, for himself, his heirs, executors, and administrators, doth hereby covenant with the said assignee, his executors, administrators, and assigns, in manner following, that is to say: That he, the said assignor, hath not at any time heretofore done, committed, or executed, or willingly permitted, any act, matter, or thing whatsoever by means whereof the lands and premises or the moneys hereby assigned or intended so to be, or any part thereof, are, is, can, shall, or may be in any wise impeached, charged, encumbered,

or in any manner prejudicially affected in title, charge, estate, or otherwise howsoever.

And also that he, the said assignor, hath not received the said sum of , or any part thereof; and that the same is now justly due and owing, under and by virtue of the said in part recited Indenture of Mortgage.

And that he, the said assignor, his executors or administrators, will not, nor shall at any time hereafter, revoke or attempt to revoke the power or authority hereinbefore contained; or disavow, discontinue, release, or discharge any action, suit, judgment, or execution to be brought, prosecuted, or obtained by the said assignee, his executors, administrators, or assigns, by virtue thereof, without the consent in writing of him, the said assignee, his executors, administrators, or assigns, or the rule, order, or decree of some court of law or equity.

And the said assignee, for himself, his heirs, executors, and administrators, doth hereby covenant with the said assignor, his executors and administrators, that he, the said assignee, his heirs, executors, and administrators, will at all times save harmless and keep indemnified the said assignor, his executors and administrators, and his and their lands and tenements, goods and chattels, from and against all manner of costs, damages, losses, and expenses whatsoever which shall or may at any time hereafter be paid or sustained by him or them for or by reason of any action or actions, or suit or suits, which shall or may be brought or prosecuted in the name or names of the said assignor, his executors or administrators, under or by virtue of

the power or authority hereinbefore contained in that behalf or in any manner relating thereto, except such costs, damages, losses, and expenses only as shall or may happen by or through the wilful default or neglect of him, the said assignor, his executors or administrators.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of }

Assignment of Mortgage.

ANOTHER FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , in pursuance of the act to facilitate the conveyance of real property, BETWEEN , of the first part, , of the second part [and , of the third part].

WHEREAS, by an Indenture of Mortgage, bearing date the day of , in the year of our Lord one thousand eight hundred and , and made between : In consideration of the sum of the said mortgagor therein named did grant, bargain, sell, convey, and assure unto the said , his heirs and assigns, forever, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the , SUBJECT to a proviso for redemption of the said premises on payment of the said principal sum and interest on the days and times and in manner therein mentioned. AND WHEREAS the said party of the first part hath agreed with the said party of the second part for the absolute sale to

him of all principal moneys and interest due and to become due on the said Indenture of Mortgage, and all interest of the said party of the first part of and in the lands and premises thereby conveyed, at or for the price or sum of .

AND WHEREAS there is now due upon the said mortgage, for principal, the sum of , with interest from the day of , one thousand eight hundred and .

NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of , of lawful money of Canada, now paid by the said party hereto of the second part to the said party hereto of the first part, the receipt whereof is hereby acknowledged, He, the said party hereto of the first part, DOTH grant, bargain, sell, assign, transfer, convey, and set over unto the said party hereto of the second part, his heirs and assigns, ALL AND SINGULAR the said lands, tenements, hereditaments, and premises comprised in and mortgaged by the said hereinbefore in part recited Indenture of Mortgage, with their and every of their appurtenances, and all the estate and interest of the said party of the first part therein, TOGETHER with the said Indenture of Mortgage, and the benefit and advantage of all and every the clauses, covenants, matters, and things therein contained; and together also with the said principal sum and interest thereby secured and now due and payable, or to become due and payable, under and by virtue thereof.

TO HAVE AND TO HOLD, receive and take, the same and every part and parcel thereof unto and to the use of the said party hereto of the second part, his heirs,

executors, administrators, and assigns, forever, free from all incumbrances made or done by the said party hereto of the first part; but subject, nevertheless, to such right or equity of redemption as is now subsisting in the said lands and premises on payment of the said principal moneys and interest under and by virtue of the said Indenture of Mortgage.

And the said party hereto of the first part doth hereby, for himself, his heirs, executors, and administrators, covenant with the said party of the second part, his heirs, executors, administrators, and assigns, That the said mortgage is now a good, valid, and subsisting security for the principal money and interest hereby assigned, and that the same are now due and unpaid.

And that he hath good right to assign and convey the said mortgage and premises unto the said party hereto of the second part, in manner aforesaid.

And that the said party of the second part shall have quiet possession of the said premises hereby assigned, without any interruption by the said party of the first part or any persons claiming under him, free from all incumbrances.

And that the said party of the first part, his heirs, executors, and administrators, will execute such further assurances of the said premises as may be requisite.

And the said party of the first part doth hereby make, constitute, and appoint the said party of the second part, his heirs, executors, administrators, and assigns, the true and lawful attorney and attorneys irrevocable of him, the said party of the first part, his heirs, executors, administrators, or assigns, for

him and in his or their name or names, but for the sole use, benefit, and advantage of the said party of the second part, his heirs, executors, administrators, or assigns, to ask, demand, sue for, recover, and receive of and from the said mortgagor in the said mortgage named, his heirs, executors, and administrators, all such principal and interest moneys as are now or shall hereafter become due and owing upon the said mortgage; and on non-payment thereof or any part thereof to commence, institute, and prosecute, or proceed with, any action, suit, or execution now pending, as he may think proper or be advised; and on payment thereof or any part thereof to make, seal, execute, and deliver receipts, releases, acquittances, and discharges, and generally to do, perform, and execute all such acts, deeds, matters, and things for recovering the said principal and interest, or foreclosing the said mortgage, or obtaining the possession of the said lands and premises, or for releasing the said mortgage, as fully and effectually to all intents and purposes as the said party of the first part, his heirs, executors, or administrators, could do if personally present and acting in the premises; the said party of the first part, for himself, his heirs, executors, and administrators, hereby ratifying and confirming and covenanting and agreeing to ratify and confirm all and whatsoever the said party of the second part, his heirs, executors, administrators, or assigns, shall lawfully do or cause to be done in or about the premises by virtue hereof: PROVIDED he or they do and shall save harmless and indemnify and keep harmless and indemnified the said party of the first part, his heirs,

executors, and administrators, and his and their lands and tenements, goods and chattels, of, from, and against all loss, damage, costs, charges, and expenses by reason or on account of any proceeding to be taken in pursuance of the power hereby vested and granted by him to the said party of the second part, his heirs, executors, administrators, or assigns. [AND the said party of the third part hereby bars her dower in the said lands.]

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of }

Assignment of Mortgage.

SHORT FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, and , of the second part: WHEREAS, by an Indenture of Mortgage, bearing date the day of , one thousand eight hundred and , and made between , IT IS WITNESSED, that in consideration of , of lawful money of Canada, the said mortgagor therein named did convey and assure unto the said , heirs and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the : To HOLD the same unto and to the use of the said heirs and assigns, SUBJECT to a proviso for redemption, upon payment of the said principal moneys and

interest as therein mentioned. [Here insert any additional recital.]

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of , of lawful money of Canada, now paid by the said part hereto of the second part to the said part hereto of the first part (the receipt whereof is hereby acknowledged), the said part hereto of the first part Do hereby grant, bargain, sell, assign, transfer, and set over unto the said part hereto of the second part, heirs and assigns, ALL AND SINGULAR the said lands, tenements, hereditaments, and premises comprised in and conveyed by the said hereinbefore in part recited Indenture of Mortgage, and all the estate and interest of the said part hereto of the first part therein or thereto.

TO HAVE AND TO HOLD the same unto and to the use of the said part hereto of the second part, heirs and assigns forever, SUBJECT, NEVERTHELESS, to such equity of redemption, on payment by the said mortgagor of the said principal moneys and interest, as is now subsisting therein by virtue of the said mortgage.

AND THIS INDENTURE FURTHER WITNESSETH that, for the consideration aforesaid , the said part hereto of the first part Do hereby assign, transfer, and set over unto the said part hereto of the second part all principal moneys and interest now remaining due and unpaid, and to accrue due and payable, under and by virtue of the said Indenture of Mortgage.

TO HAVE, RECEIVE, AND TAKE the same unto the said part hereto of the second part, executors, administrators, and assigns, as and for own proper moneys and effects absolutely.

And for better enabling the said part hereto of the second part, executors, administrators, and assigns, to recover and receive the said principal moneys and interest hereby assigned, the said part hereto of the first part Do hereby nominate, constitute, and appoint the said part hereto of the second part, executors, administrators, or assigns, the true and lawful attorney and attorneys of the said part hereto of the first part, to ask, demand, sue for, recover, and receive either in the name of the said part hereto of the first part or otherwise from the said mortgagor, in the said indenture of Mortgage named, executors, administrators, or assigns, or any other person or persons liable to pay the same, the said principal moneys and interest hereby assigned, and to commence, institute, and prosecute any action, suit, or other proceeding, at law or in equity, for the recovery of the same; and to give sufficient receipts and discharges therefor, and to make, do, and execute any other act, deed, matter, or thing for recovering the said principal moneys and interest, or giving proper and sufficient discharges therefor, or for further assuring the said premises unto the said part hereto of the second part as shall be thought expedient.

And the said part hereto of the first part, for heirs, executors, administrators, and assigns, hereby covenant with the said part hereto of the second part, heirs, executors, administrators, and assigns:

That the said principal moneys and interest expressed to be hereby assigned are now due and owing to the said part hereto of the first part by virtue of the said mortgage;

AND THAT ha done no act whereby the same have been received, released, or discharged, or the said premises incumbered.

AND that the said mortgage is good, valid, and subsisting, notwithstanding any such act of the said part hereto of the first part.

AND the said part hereto of the second part hereby covenant to indemnify and save harmless the said part of the first part, estate and effects, from all loss, costs, charges, damages, and expenses, by reason or on account of any such proceedings as aforesaid.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of . }

Assignment of Mortgage.

ANOTHER SHORT FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the , in the County of and Province of Canada, of the first part, and , of the , in the County of and Province aforesaid, of the second part.

WHEREAS, by an Indenture of Mortgage bearing date the day of , in the year of our Lord one thousand eight hundred and , and made between , of the , &c., and the said , of the part, it is WITNESSED, that in consideration of the sum of , of lawful money of Canada, to him the said paid by the said , HE, the

said , did grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto the said , his heirs and assigns, all and singular th certain parcel or tract of land and premises situate, lying, and being in the , the butts and bounds of which said parcel or tract of land and premises are more particularly described and set forth in the said Indenture of Mortgage; To HAVE AND TO HOLD the same unto the said , his heirs and assigns, forever. SUBJECT, NEVERTHELESS, to a proviso therein contained for redemption upon payment by the said to the said of the sum of of lawful money aforesaid and interest, on the day and time and in manner therein mentioned.

AND WHEREAS the sum of is now owing to the said on the said in part recited security, and the said hath agreed to sell and assign the said lands and premises, and all the moneys thereby secured, as well as the said Indenture of Mortgage, and all his interest therein, unto the said for the consideration hereinafter mentioned.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part to this Indenture, in consideration of the sum of , of lawful money of Canada aforesaid, to him by the said party of the second part to this Indenture in hand paid, the receipt whereof he, the said party of the first part, doth hereby acknowledge, and of and from the same, and every part thereof, acquit, release, and discharge the said party of the second part, his heirs, executors, administrators, and assigns, forever; HE, the said party of the first part, hath bargained, sold, assigned,

transferred, and set over to the said party of the second part to this Indenture, his heirs, executors, administrators, and assigns, the said principal sum of , so due and owing to him as aforesaid, and secured by the hereinbefore in part recited Indenture of Mortgage, and also all future and other sums of money which from henceforth shall or may grow due by way of interest for or on account of the said principal sum of . AND ALSO the said messuages and tenements, lands and premises, comprised in the said in part recited Indenture of Mortgage, and all the estate, right, title, interest, claim, and demand whatsoever of him, the said party of the first part, of, in, to, or out of the said premises or any part thereof, and of, in, to, or out of the said principal moneys.

TO HAVE AND TO HOLD, receive and take, the said principal sum of and interest, and all and singular other the premises hereby assigned, and every part thereof, unto the said party of the second part, his heirs, executors, administrators, or assigns, to and for his and their own proper moneys, securities, and effects absolutely; AND, for the more effectually enabling the said party of the second part, his executors, administrators, and assigns, to recover and receive the said principal sum of and interest, and to have and take the benefit of the security for the same, he, the said party of the first part, hath made, ordained, constituted, and appointed the said party of the second part, his executors, administrators, or assigns, his true and lawful attorney or attorneys, to ask, demand, sue for, recover, and receive from the said , his executors, administrators, or

assigns, or any other person or persons liable to pay the same, the said sum of and interest, and to commence and prosecute any action, suit, or other proceeding, either at law or in equity, for the recovery of the same, and on receipt of the said principal moneys and interest, or any part thereof, to give sufficient receipts and discharges, AND to make, do, and execute all or any other act, matter, or thing, for recovering and receiving the said principal sum and interest; AND the said party hereto of the first part, for himself, his heirs, executors, administrators, and assigns, covenants with the party hereto of the second part, his heirs, executors, administrators, and assigns, that the said principal sum of is now owing to him, the said party hereto of the first part, under the said security, and that he has done no act or thing whereby the said principal sum of is or has been received, released, discharged, or incumbered.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of .

Assignment of Mortgage.

BY INDORSEMENT.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, and , of the second part.

WITNESSETH, that the said party of the first part, in consideration of the sum of , of lawful

money of Canada, by the said party of the second part to him in hand paid, the receipt whereof is hereby by him acknowledged, hath bargained, sold, and assigned, and by these presents doth bargain, sell, and assign, unto the said party of the second part, his executors, administrators, and assigns, all that certain sum of , secured or intended to be secured to the said party of the first part in and by the Indenture of Bargain and Sale by way of Mortgage hereunto annexed, and all interest henceforth to become due for the same, together with the said Indenture of Mortgage, and together also with full power and authority in the name or names of the said party of the first part, his executors or administrators, to receive and give effectual discharges for the said sum of , and from time to time to commence, institute, and prosecute such actions, suits, and other lawful proceedings upon the said Indenture of Mortgage, for the recovery of the moneys, benefits, and advantages secured thereby, as shall be deemed necessary or expedient.

TO HAVE, HOLD, RECEIVE, AND TAKE the said sum of , and the interest henceforth to become due for the same, and all and singular other the premises hereby assigned or intended so to be, and every of them and every part thereof, respectively, unto the said party of the second part, his executors, administrators, and assigns, for his and their own absolute use and benefit.

AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the further sum of ten shillings by the said party of the second part to the said

party of the first part in hand paid, the receipt whereof is hereby also acknowledged, he, the said party of the first part, hath bargained, sold, and released, and by these presents doth bargain, sell, and release, unto the said party of the second part and his heirs, ALL AND SINGULAR that certain parcel or tract of land in the annexed Indenture described, being , and all the estate, right, title, and interest of the said party of the first part thereto or therein, by virtue of the said Indenture of Mortgage.

TO HAVE AND TO HOLD the same, with all appurtenances thereunto belonging or appertaining, unto and to the use of the said party of the second part, his heirs and assigns, forever, BUT subject to such right, title, and equity of redemption as the same are now subject and liable to under and by virtue of the said annexed Indenture.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of . }

Assignment of Mortgage.

BY INDORSEMENT.—SHORT FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN within named, of the first part, and , of , of the second part, WITNESSETH, that the party of the first part, for divers good considerations him thereunto moving, and for

the further consideration of the sum of five shillings to him in hand well and truly paid by the party of the second part at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and assigned, and by these presents doth grant, bargain, sell, and assign, to the party of the second part, his heirs, executors, administrators, and assigns, all the right, title, interest, claim, and demand whatsoever of him, the party of the first part, of, in, and to the lands and tenements mentioned and described in the within mortgage, AND ALSO to all sum and sums of money secured and payable thereby and now remaining unpaid, to have and to hold the same, and to ask, demand, sue for, and recover the same, as fully to all intents and purposes as he, the party of the first part, now holds and is entitled to the same.

IN WITNESS WHEREOF, the parties to these presents have hereto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of .

Memorial of Assignment of Mortgage.

A MEMORIAL to be registered of an Indenture of Assignment of Mortgage, bearing date the day of , in the year of our Lord one thousand eight hundred and , made between , of the first part, , of the second part [and , of the third part].

WHEREBY IT IS WITNESSED THAT in consideration of the sum of , of lawful money of Canada,

then paid by the said part of the second part to the said part of the first part, the receipt whereof is thereby acknowledged, he, the said part of the first part, did thereby assign, transfer, and set over, convey and assure, unto the said part of the second part, heirs, executors, administrators, and assigns, as well A CERTAIN INDENTURE OF MORTGAGE, bearing date the day of , one thousand eight hundred and , and made between , as also the unpaid principal and interest now remaining due of a certain mortgage debt or sum of , and the following parcel or tract of land and premises, that is to say, ALL AND SINGULAR th certain parcel or tract of land and premises, situate, lying, and being in the .

TO HOLD the same unto and to the use of the said part of the second part, heirs, executors, administrators, and assigns, forever, SUBJECT to such equity of redemption as was then subsisting therein by virtue of the said Indenture of Mortgage. [And the said party of the third part thereby barred her dower in the said lands.] Which said Indenture is witnessed by .

AND this Memorial thereof is hereby required to be registered by me, the said assign therein named.

WITNESS my hand and seal, this day of , one thousand eight hundred and .

Signed and sealed in the presence of . }

Count of , To wit. , of , in the within Memorial named, maketh oath and saith that

he was present, and did see the Indenture to which the said Memorial relates duly executed, signed, sealed, and delivered, by the therein named , and that he is a subscribing witness to the execution of the said Indenture; that he, this deponent, also saw the said Memorial duly signed and sealed by the therein named for registry thereof, which said Memorial was attested by him, this deponent, and another subscribing witness, and that both said instruments were executed at .

Sworn before me, at , this day of , 18 .

A Commissioner in B. R., &c., in and for the County of .

Assignment for Benefit of Creditors.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, (Trustees), of the second part, and the several other persons whose names and seals are hereunto subscribed and set, being respectively creditors of the said part of the first part, of the third part.

WHEREAS, the said part of the first part is indebted unto the said parties of the second and third parts in the sums of money set opposite to their respective names in the Schedule hereunder written, and, being unable to pay the same in full, has agreed to assign all his estate and effects, both real and personal, unto the said part of the second part, heirs, executors, administrators, and assigns, in manner and upon the trusts hereinafter mentioned.

NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, and of the sum of five

shillings, of lawful money of Canada, to the said part of the first part in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, the said part of the first part Do by these presents grant, bargain, sell, release, convey, assign, transfer, and set over unto the said part of the second part, ALL AND SINGULAR the real estate enumerated in the Schedule hereunto annexed; AND ALSO all and every accounts, books of account, promissory notes, book and other debts, sum and sums of money, and all securities for money, shares, rights, and interests, and all other the real and personal estate and effects whatsoever, and wheresoever, of , the said part of the first part, whether in possession, reversion, expectancy, or otherwise; TOGETHER WITH full and free power and right of entry in and to all and every the messuages, or tenements, and hereditaments, wherein the said accounts, books of account, promissory notes, book and other debts, or any of them, now are or hereafter shall be, and all reversions, remainders, yearly and other rents, issues, and profits, AND all the estate, right, title, interest, possession, property claim, and demand, both at law and in equity, of , the said part of the first part, of, in, to, or out of the same.

TO HAVE AND TO HOLD the said real and personal estate and effects, and other the premises hereinbefore conveyed and assigned, or intended so to be, with their and every of their appurtenances, unto the said part of the second part, heirs, executors, administrators, and assigns, forever; upon

trust as to the said real estate, that they, or the survivor of them, or the heirs, executors, or administrators of such survivor, shall, as soon as conveniently may be, make sale and dispose of the same for the best price or prices that can be reasonably obtained for the same, and, on the sale thereof, to make and execute such deeds, conveyances, and other assurances as may be necessary for conveying the same to the purchaser or purchasers thereof.

And as to the said personal estate and effects upon trust, that , the said part of the second part, and the survivor of them, and the executors or administrators of such survivor, do, and shall forthwith, or as soon as conveniently may be, take possession of, call in, collect, compel payment of, and receive, All and singular the said personal estate and effects hereinbefore assigned, or intended so to be, and do and shall, as soon as conveniently may be, sell and dispose of, and convert into money, such parts thereof as shall not consist of money, with power for the said trustees or trustee for the time being to accept any composition for any debts or moneys owing to the said part of the first part, and to allow time for the payment of any of the said debts, moneys, or compositions, and that either with or without taking security for the same, and with power also for the said trustees or trustee for the time being to make any such sale, disposition, or conversions into money, as aforesaid, either by public auction or by private sale.

And do and shall, by and out of the moneys to arise from any of the means aforesaid, pay the costs,

charges, and expenses of and attending the preparing, engrossing, execution, and making copies of these presents, and of the sale of the said real estate, and the taking possession, calling in, collection, compelling payment, recovering, sale, disposition, and conversion into money of the said personal estate and effects, and all other the costs, charges, or expenses to be incurred or become payable in the execution of the trusts of these presents, or in relation thereto; AND do and shall, in the next place, pay and divide the clear residue or surplus of the said moneys unto and amongst all and every of the creditors of the said part of the first part, in ratable proportions, according to the amount of their several and respective debts, SUBJECT, NEVERTHELESS, to the covenants and provisions hereinafter contained.

AND the said part of the first part do by these presents make, ordain, constitute, and appoint the said part of the second part, and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, to be the true and lawful attorneys of him the said part of the first part, to ask, demand, sue for, recover, and receive all debts and moneys due or owing, or payable or to become payable, to , the said part of the first part, and all and singular other the personal estate and effects hereinbefore assigned, or intended so to be, which may be in the possession of any person or persons other than the said part of the first part, AND on payment or delivery thereof, or of any part thereof, to give and execute sufficient receipts, acquittances, or other discharges for the same, AND

on non-payment or non-delivery thereof, to bring and commence, and either to prosecute or discontinue, any action, suit, or other proceedings, for compelling the payment or delivery thereof, AND for all or any of the purposes aforesaid to use the name or names of the said part of the first part, his heirs, executors, or administrators, and all and whatsoever the said attorneys or attorney shall lawfully do or cause to be done in or about the premises the said part of the first part do hereby, for heirs, executors, and administrators, covenant with the said part of the second part, executors and administrators, to allow, ratify, and confirm.

AND IT IS HEREBY AGREED AND DECLARED by and between the said parties hereto, that it shall be lawful for the said trustees to employ any person or persons in winding up the affairs of the said part of the first part, and in the sale, collecting, getting in, and disposing of the said real and personal estate and effects hereinbefore conveyed and assigned, or intended so to be, or any part thereof, or otherwise in or about the premises, and to make such remuneration or allowance out of the said trust estate to the person or persons so employed as the said trustees or trustee may think fit.

PROVIDED ALWAYS, that any person or persons who, at the date of these presents, shall be a surety or liable in any manner for any debt of the said part of the first part, may, after payment by him of the same debt or any part thereof, stand in the place of the person to whom the same debt was owing for the whole or such part of the debt as shall

have been paid, in respect of the trusts and benefit of these presents notwithstanding the same may be so paid and discharged after the date and execution hereof, and the dividend or dividends thereafter payable in respect of the amount of such debt or liability shall be paid to such person or persons, *pro rata*, but not so as to disturb any prior dividend or dividends.

PROVIDED ALSO, and it is hereby agreed and declared, that the receipts of the said part of the second part, and the survivor of them, and the executors and administrators of such survivor, or the trustees or trustee for the time being, acting in the execution of the trusts of these presents, for any sums or sum of money payable under or by virtue of these presents, shall be sufficient and effectual discharges for the same, and that the persons paying the same, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application of the same, or be in any wise obliged to see to the application thereof.

PROVIDED ALSO, and it is hereby further agreed and declared, that the trustees or trustee for the time being of these presents shall not be answerable the one for the other of them, nor for involuntary losses, and that it shall be lawful for them to reimburse themselves out of the moneys which shall come to their hands by virtue of these presents, all costs, charges, and expenses incurred or to be incurred in any wise relating thereto or to the execution of the trusts thereof.

PROVIDED ALSO, and it is hereby further agreed

and declared, that it shall be lawful for the said trustees or trustee for the time being of these presents, if they or he shall so think proper, by and out of the said trust moneys to pay off and discharge any debt or debts due or owing from the said part of the first part on any mortgage, charge, lien, bill, note, or other securities, and either with or without interest, and thereupon to cause the same mortgages, charges, liens, bills, notes, or other securities to be delivered up or assigned to the said trustees or trustee, to be held upon the same trusts as are hereinbefore declared of the trust moneys and premises herein comprised.

In Witness, &c.

The Schedule above referred to, being parties of the third part hereto, and Creditors of the said part of the first part.

General Form of Assignment to be indorsed on any Instrument.

Know all Men by these Presents, that I, the within-named A. B., in consideration of five dollars to me paid by C. D., have assigned to the said C. D. and his assigns all my interest in the within-written instrument, and every clause, article, or thing therein contained; and I do hereby constitute the said C. D. my attorney, in my name, but to his own use, to take all legal measures which may be proper for the complete recovery and enjoyment of the assigned premises, with power of substitution.

Witness my hand and seal, this, &c.

Assignment of Partnership Property and Debts by one Partner to another, in trust to close the Concern and pay over a Moiety of the Funds realized after all Debts are paid.

WHEREAS a copartnership has heretofore existed between J. S. and A. B., both of the of , which copartnership has been known under the name of S. & B., and which it is the intention of the said copartners forthwith to dissolve and determine:

NOW THIS INDENTURE of two parts, made this day of , in the year , by and between the said J. S., of the one part, and the said A. B., of the other part, WITNESSETH:

FIRST. That the copartnership aforesaid is hereby, by the mutual consent of the said parties, dissolved and determined.

SECOND. The said J. S. doth hereby sell, transfer, assign, and set over unto the said A. B., his moiety of all the stock in trade, goods, merchandise, effects, and property of every description belonging to or owned by the said copartnership, wherever the same may be, together with all debts, choses in action, and sums of money due and owing to the said firm from any and all persons whomsoever, to hold the same to the said A. B. and his assigns forever in trust for the following purposes, namely: that the said A. B. shall sell and dispose of all the goods, property, and effects belonging to the said firm, at such time and in such manner as he may think prudent, and shall with seasonable diligence collect all the debts and sums of money due and owing to the said firm; and shall, out

of the proceeds of the said sales, and with the money thus collected, pay and discharge all the debts and sums of money now due and owing from the said firm, as far as the proceeds of said sales and the sums of money collected will go; and, after fully satisfying all demands against the said firm, if there be any surplus, shall pay over one moiety thereof to the said J. S. or his assigns.

THIRD. The said J. S. doth hereby constitute and appoint the said A. B. his attorney irrevocable, in his the said A. B.'s own name, or in the name of the said firm, to demand, collect, sue for, and receive any and all debts and sums of money due and owing to the said firm; to institute and prosecute any suits for the recovery of the said debts, or to compound the same, as he may judge most expedient; to defend any and all suits against the said firm; to execute all such paper writings and acquittances as may be necessary; and generally to do all such acts and things as may be necessary or proper for the full and complete settlement of all business and concerns of the said copartnership.

FOURTH. The said A. B., for himself and his heirs, executors, and administrators, hereby covenants to and with the said J. S. and his assigns that he will sell and dispose of all the partnership property and effects to the best advantage; that he will use his best diligence and endeavors to collect all debts and sums of money due and owing to the said firm; and that he will truly and faithfully apply the proceeds of said sale, and the moneys collected, to the payment, discharge, and satisfaction of all debts and demands

against the said firm, as far as the same will go, and, after discharging all such debts, will pay over to the said J. S. or his assigns one moiety of any surplus that may remain; and, further, that he will keep full and accurate accounts of all moneys received by him for goods sold or debts collected, as well as of moneys paid out, and will render a just, true, and full account thereof to the said J. S. or his assigns.

FIFTH. The said J. S., for himself, &c., covenants to and with the said A. B., &c., that, upon settlement of accounts, if it shall be found that the debts due and owing from the said firm exceed the amount of moneys received from the sales of the said goods and the debts collected, he will pay unto the said A. B., or his assigns, one moiety of any balance that may then be due and owing from the said firm.

IN WITNESS WHEREOF, &c.

Assignment of Partnership Property and Debts by one Partner to another, for a sum certain.

THIS INDENTURE, of two parts, made and concluded this day of , in the year of, &c., , by and between W. S. P., of , of the first part, and J. B. P., of , of the second part, WITNESSETH:

THAT WHEREAS the said parties were lately copartners in the business of , which partnership was dissolved and determined on the day of last; and whereas many debts, due and owing to the said parties on account of their said copartnership, are still outstanding, and debts due by the said firm

are yet unpaid; and whereas it is agreed that the said party of the second part shall assign and release to the said party of the first part all his interest in the stock in trade, goods, and effects belonging to the said firm, and in the debts now owing to the said firm, and that the said party of the first part shall assume all the debts and liabilities of the said firm, and shall discharge and indemnify the said party of the second part from all liabilities and losses arising from the said partnership.

NOW THEREFORE, in pursuance of the said agreement, and in consideration of the sum of paid and secured to the said J. B. P., he, the said J. B. P., doth hereby fully and obsolutely sell, assign, release, and make over to the said W. S. P. all his right, title, interest, and share in and to all the stock in trade, goods, merchandise, machinery, tools, books, leasehold premises, and effects belonging to the said partnership, of whatever kind or nature, and wheresoever situated; also, all his right, title, and interest in and to all the debts and sums of money now due and owing to the said firm, whether the same be by bond, bill, note, or account, or otherwise; and the said J. B. P. doth hereby make and appoint the said W. S. P., his executors, administrators, and assigns, to be his attorney and attorneys, to receive all and several the debts and sums of money above mentioned, to his and their own use and benefit; and doth hereby authorize the said W. S. P., his executors, &c., to demand, collect, and sue for the said debts and sums of money, and to use his the said J. B. P.'s name in any way or manner that the collec-

tion, recovery, and realization of the said debts and demands may render necessary, as well in court as out of court, but at their own proper costs and charges, and without cost or damage to the said J. B. P. And the said J. B. P. doth hereby further authorize the said W. S. P. to convey and transfer to his own name, and for his own use and benefit, any and all sums of money and effects, real and personal estate, which may be taken or received in the name of the said firm, and to hold the same free from all claims by the said J. B. P., his executors, administrators, or assigns.

And these Presents further witness, that, in pursuance of the said agreement, the said W. S. P., for himself, his executors and administrators, doth hereby covenant to and with the said J. B. P., his executors and administrators, that he, the said W. S. P., and his, &c., shall pay and discharge, and at all times hereafter save harmless and indemnify, the said J. B. P., his, &c., from and against all and every the debts, duties, and liabilities which, at the dissolution and determination of the said partnership, were due and owing by the said firm to any person or persons, for any matter or thing touching the said partnership, and of and from all actions, suits, costs, expenses, and damages, for or concerning the said debts, duties, and liabilities, unless the said J. B. P. shall have contracted any debts or incurred any liabilities, in the name and on account of the said firm, which are unknown to the said W. S. P. and do not appear in the books of the said firm; for which, if any such

exist, the said W. S. P. does not hereby intend to make himself responsible.

IN WITNESS WHEREOF, &c.

Assignment of a Debt, with Power of Attorney, &c.

KNOW ALL MEN BY THESE PRESENTS, that , in consideration of the sum of dollars paid to by , of , in the county of (the receipt of which is hereby acknowledged), do hereby sell, assign, and transfer unto the said all claims and demands against , of , for debts due to the said , and all actions against said now pending in favor, and all causes of action whatsoever against him.

And the said do hereby nominate and appoint the said , his executors and administrators, attorney or attorneys irrevocable; and do give him and them full power and authority to institute any suit or suits against said and to prosecute the same, and any suit or suits which are now pending for any cause or causes of action, in favor of said against said , to final judgment and execution; and any executions for the cause or causes aforesaid to cause to be satisfied by levying the same on any real or personal estate of the said , and the proceeds thereof to take and apply to his or their own use; and in case of levying said executions on any real estate, the said hereby empower the said , his executors and administrators, to sell, and execute deeds to convey the same, for such price or consideration, and to such person or persons, and on such terms, as he or they shall deem ex-

pedient; or, if he or they prefer it, to execute any conveyances that may be necessary to vest the title thereof in him or them, as his or their own property; but it is hereby expressly stipulated that all such acts and proceedings are to be at the proper costs and charges of the said , his executors and administrators, without expense to the said .

And the said do further empower the said , his executors and administrators, to appoint such substitute or substitutes as he or they shall see fit, to carry into effect the objects and purposes of this authority, or any of them, and the same to revoke from time to time at his or their pleasure; the said hereby ratifying and confirming all the lawful acts of the said , his, &c., in pursuance of the foregoing authority.

In Testimony, &c., this day of , A. D. 18 .

Signed, sealed, and delivered in the presence of . .

Assignment of a Policy of Insurance by Indorsement.

Know all Men by these Presents, that I, the within-named A. B., for and in consideration of the sum of to me paid by C. D., of, &c. (the receipt whereof is hereby acknowledged), have granted, sold, assigned, transferred, and set over, and by these presents I do absolutely grant, sell, assign, transfer, and set over, to him, the said C. D., all my right, property, interest, claim, and demand in and to the within policy of insurance, which have already arisen or which may hereafter arise thereon, with full power to use my name so far as may be necessary to enable

him fully to avail himself of the interest herein assigned, or hereby intended to be assigned. The conveyance herein made, and the powers hereby given, are for myself and my legal representatives to said C. D. and his legal representatives.

IN TESTIMONY WHEREOF, &c.

Assignment or Bill of Sale of Goods.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, and , of the second part: WHEREAS, the said part of the first part is possessed of the hereinafter set forth and enumerated, and hath contracted with the said part of the second part for the sale to of the same at the sum of :

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of , of lawful money of Canada, paid by the said part of the second part to the said part of the first part, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), the said part of the first part HA bargained, sold, assigned, transferred, and set over, AND by these presents DO bargain, sell, assign, transfer, and set over unto the said part of the second part, executors, administrators, and assigns, ALL those, the said , AND all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of , the said part of the first part, of, in, to, and out of the same, and every part thereof.

To HAVE AND TO HOLD the said hereinbefore assigned premises, and every part thereof, with the appurtenances, and all the right, title, and interest of the said part of the first part therein as aforesaid, unto and to the use of the said part of the second part, executors, administrators, and assigns, to and for sole and only use forever.

AND the said part of the first part do hereby, for heirs, executors, and administrators, covenant, promise, and agree with the said part of the second part, executors and administrators, in manner following, that is to say:

THAT , the said part of the first part, now rightfully and absolutely possessed of and entitled to the said hereby assigned premises and every part thereof, and that the said part of the first part now ha in good right to assign the same unto the said part of the second part, executors, administrators, and assigns, in manner aforesaid and according to the true intent and meaning of these presents; AND that the said part hereto of the second part, executors, administrators, and assigns, shall and may from time to time and at all times hereafter peaceably and quietly have, hold, possess, and enjoy the said hereby assigned premises and every part thereof to and for own use and benefit, without any manner of hindrance, interruption, molestation, claim, or demand whatsoever, of, from, or by , the said part of the first part, or any person or persons whomsoever; AND that free and clear and freely and absolutely released and discharged or otherwise at the costs of the said part

of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges, and incumbrances whatsoever; AND, moreover, that , the said part of the first part, and all persons rightfully claiming or to claim any estate, right, title, or interest of, in, or to the said hereby assigned premises or any part thereof, shall and will from time to time and at all times hereafter, upon every reasonable request of the said part of the second part, executors, administrators, or assigns, but at the costs and charges of the said part of the second part, make, do, and execute or cause to be made, done, and executed all such further acts, deeds, and assurances for the more effectually assigning and assuring the said hereby assigned premises unto the said part of the second part, executors, administrators, and assigns, in manner aforesaid and according to the true intent and meaning of these presents, as by the said part of the second part, executors, administrators, or assigns, or counsel, shall be reasonably advised and required.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

A. B. [L. S.]
C. D. [L. S.]

Signed, sealed, and delivered in the presence of
X. Z.

CANADA: Count of , to wit: I, , in the within Bill of Sale named, make oath and say, that the sale thereby made is *bona fide* and for good consideration, namely: , and not for the purpose of holding or enabling me, this deponent to hold the goods mentioned therein against the creditors of the said bargainer.

Sworn before me, at , this day of , A.D. 18 .

a Commissioner in B. R. in and for .

CANADA: Count of , to wit: I, , make oath and say, that I was personally present and did see the annexed Bill of Sale duly signed, sealed, and delivered by , the parties thereto, and that I, this deponent, am a subscribing witness to the same, and that the name , set and subscribed as a witness to the execution thereof, is my handwriting.

Sworn before me, at , this day of , A.D. 18 .

a Commissioner in B. R., &c.

ANOTHER FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the one part, and , of the other part. WHEREAS, the said ha contracted and agreed with the said for the absolute sale to h of the , mentioned

and described in the Schedule hereto, at or for the price or sum of :

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said sum of , of lawful money of Canada, by the said to the said well and truly paid, as or before the sealing and delivery of these presents (the receipt of which said sum h , the said , do hereby admit and acknowledge, and of and from the same and every part thereof do hereby acquit, release, and forever discharge the said , h executors, administrators, and assigns), , the said , Ha bargained and sold and by these presents Do bargain and sell unto the said , h executors, administrators, and assigns, ALL mentioned and described in the said Schedule, together with all advantages, privileges, and emoluments to arise therefrom or thereunto in any wise appertaining: TO HAVE, HOLD, RECEIVE, AND TAKE the said and all and singular other the premises hereby bargained and sold or intended so to be, with their appurtenances, unto the said , h executors, administrators, and assigns, for h and their absolute use and benefit; AND the said do hereby, for , h heirs, executors, and administrators, covenant, promise, and agree with and to the said , h executors, administrators, and assigns, that it shall be lawful for the said , h executors, administrators, and assigns, at all times hereafter to have, hold, use, occupy, possess, and enjoy the said hereby assigned or intended so be, without any let, suit, hindrance, disturbance, claim, or de-

mand whatsoever of, from, or by any person or persons whomsoever.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first within written.

Signed, sealed, and delivered by the } said in the presence of . }

The Schedule to which the foregoing Indenture refers.

Be it remembered, that on the day of , in the year first within written, a delivery was made by the within mentioned to the within mentioned for the within mentioned or referred to; a being delivered to the said , in the name of the whole, in the presence of .

Witness,

A. B., of, &c.

(*The two Affidavits the same as in the last Form.*)

CHAPTER V.

Of Auctions and Auctioneers.

An auctioneer is a person who is authorized to sell goods or merchandise at public auction or sale for a recompense, or (as it is commonly called) a commission. He cannot buy: he can only sell. Primarily, he is deemed the agent of the seller of the

goods only; but for certain purposes he is also deemed to be the agent both of buyer and seller. Thus, by knocking down the goods sold to the person who is the highest bidder, and inserting his name in his book or memorandum, he is considered as the agent of both parties; and the memorandum so made by him will bind both parties, as being a memorandum sufficiently signed by an agent of both parties within the statute of frauds before referred to. Before the knocking down of the goods, he is, indeed, exclusively the agent of the seller; but after the knocking down, he becomes also the agent of the purchaser, and the latter is presumed to give him authority to write down his name as purchaser. An auctioneer has also a special property in the goods sold by him, and a lien on the same and the proceeds thereof, for his commission; and he may sue the purchaser at the sale in his own name, as well as in the name of his principal. An auctioneer can sell only for ready money, unless there be some usage of trade to sell on credit, or unless the terms of sale are on credit. An auctioneer cannot delegate his authority to another person, not even to his own clerk.

Auction sales should be conducted with rigid fairness, and due notice of the sale ought to be given. Every bona fide bid should be accepted. Before proceeding to sell, the conditions of sale ought to be read or announced. Usually these conditions are written or printed; but the verbal declarations of the auctioneer at the sale, where they do not contradict the written particulars of the sale, are binding.

Although the entry by the auctioneer in his book

is a sufficient memorandum to bind both seller and buyer, yet in every sale of land it is usual to have agreements of sale and purchase signed by auctioneer and purchaser.

Forms of such agreements, and ordinary conditions of sale, are subjoined.

Auction Agreement to be signed by an Auctioneer, after a sale of Land.

I hereby acknowledge that A. B. has been this day declared by me the highest bidder, and purchaser of [*describe the land*] at the sum of dollars [*or* at the sum of dollars cents per acre, or foot], and that he has paid into my hands the sum of as a deposit, and in part payment of the purchase money; and I hereby agree that the vendor, C. D., shall in all respects fulfil the conditions of sale hereto annexed.

WITNESS my hand, at , on the day of , A.D. 18 .

J. S., *Auctioneer.*

Auction Agreement to be signed by Purchaser.

I hereby acknowledge that I have this day purchased at public auction all that [*describe the land*] for the sum of dollars [*or* for the price of dollars cents per acre, or per foot], and have paid into the hands of J. S., the auctioneer, the sum of as a deposit, and in part payment of the said purchase money; and I hereby agree to pay the remaining sum of unto C. D., the vendor, at , on or before the day of , and in all

other respects on my part to fulfil the annexed conditions of sale.

WITNESS my hand, this day of , A. D. 18 .

A. B.

Conditions of Sale of Goods.

1. The highest bidder to be the purchaser; and, if any dispute shall arise as to the last or best bidder, the property shall be immediately put up again at the former bidding.

2. No person to advance less than cents at a bidding.

3. The purchasers to give in their names, and places of residence (*if required*), and pay down a deposit of per cent. in part payment of purchase money; in default of which, the lot or lots so purchased will be immediately put up again and re-sold.

4. The lots to be taken away at the buyer's expense, within three days after, and the remainder of the purchase money to be paid on or before delivery.

5. Upon failure of complying with these conditions, the deposit money shall be forfeited; and all lots uncleared within the time aforesaid shall be re-sold by public auction or private sale, and the deficiency, if any, on such re-sale shall be made good by the defaulter.

Conditions of Sale of Land.

1. The highest bidder shall be declared the purchaser; and, if any dispute shall arise as to the last or best bidder, the property shall be immediately put up again at the former bidding.

2. No person shall advance at any one bidding less than dollars, or retract his or her bidding; and the vendors, by themselves or their agent, shall be at liberty to bid once for the property.

3. The purchaser shall pay, immediately after the sale, to the vendor's solicitor, a deposit of per cent. in part of the purchase money, and sign an agreement for the payment of the remainder on or before the day of , 18 . The premises will be sold subject to all defects or imperfections of title subsisting before the commencement of the title of the present vendors, and not occasioned by any act done by them or any person claiming under or in trust for them (and subject also to the several mortgages outstanding appearing on the certificate of the registrar of the county of , which will be produced at the time of sale).

4. The purchaser shall accept a conveyance from the vendors, to be prepared at his own expense, on payment of the remainder of the purchase money; and possession will be given on completion of the purchase: from which time the purchaser shall be entitled to the rents and profits. But if, from any cause, the remainder of the purchase money shall not be paid on the day of , 18 , the purchaser shall pay interest for the same at the rate of per cent. from that day to the day of payment; but, nevertheless, this stipulation to be without prejudice to the vendor's right to insist on the performance of this last condition.

5. If any mistake be made in the description of the property, or there be any other error in the par-

ticulars of sale, the same shall not annul the sale, but a compensation or equivalent shall be given, or taken, as the case may require, according to the average of the whole purchase money (on such error or misstatement being proved): such compensation or equivalent to be settled by two referees or their umpire — one referee to be chosen by each party, within ten days after notice given of the error, and the umpire to be chosen by the referees immediatety after their appointment.

6. The purchaser shall not be entitled to the production of any title deeds other than such as are in the vendor's hands, or in the hands of the several mortgagees.

7. Lastly, upon failure of complying with the above conditions, the deposit shall be forfeited, and the vendors shall be at full liberty (with or without notice) to re-sell the estate by public auction or private sale; and if, on such re-sale, there should be any deficiency, the purchaser shall make good such deficiency to the vendors, and all expenses attending such re-sale; the same to be recoverable as liquidated damages.

(NOTE.—*Special conditions may be necessary to meet particular cases; but the above conditions will meet ordinary cases.*)

Conditions of Sale of the Court of Chancery.

1. No person shall advance less than two pounds at any bidding under one hundred pounds, nor less than five pounds at any bidding over one hundred pounds; and no person shall retract his bidding.

2. The highest bidder shall be the purchaser; and,

if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.

3. The parties to the suit, with the exception of the vendor, are to be at liberty to bid.

4. The purchaser shall, at the time of sale, pay down a deposit in the proportion of ten pounds for every one hundred pounds of his purchase money to the vendor or his solicitors, and shall pay the remainder of the purchase money on the day of next, and upon such payment the purchaser shall be entitled to the conveyance, and be let into possession. The purchaser at the time of such sale to sign an agreement for the completion of the purchase.

5. The purchaser shall have the conveyance prepared at his own expense, and tender the same for execution.

6. If the purchaser shall fail to comply with the conditions aforesaid, or any of them, the deposit and all other payments made thereon shall be forfeited, and the premises may be re-sold, and the deficiency, if any, by such re-sale, together with all charges attending the same or occasioned by the defaulter, shall be made good by the defaulter.

CHAPTER VI.

Of Bills of Exchange.

A BILL OF EXCHANGE (foreign or inland) is defined to be an open letter of request from one man to another, desiring him to pay a sum named therein to a third person, on his account.

FOREIGN bills are such bills as are drawn in any foreign country upon a person residing here or abroad, or are drawn in this country upon a drawee residing in a foreign territory, and are payable abroad.

INLAND bills are those bills which are drawn in Canada upon any person residing in any place within the province.

Foreign bills bear so strong a resemblance in their form to inland bills that there is no occasion to notice them separately. The law affecting them is, in general, identical with the rules regulating inland bills. The leading distinctions are, that a formal *protest* is necessary (as regards the drawer and indorsers) if they be dishonored on presentment for acceptance or payment. It is also observable that the laws and customs of the foreign country in which a foreign bill is payable, or in which the party to be charged resides, may, even in our courts, regulate the time of payment, protest, &c.

It may also be mentioned, as a slight distinction between a foreign and an inland bill, that the former is, in general, drawn in sets; that is, there are several parts thereof. Therefore, the form of a foreign bill is, in general, "at after sight," or "date," &c., "pay this my *first* of exchange [*second and third of the same tenor and date not paid*] to, &c." This condition should be inserted in each part, and should in each mention every other part of the set. Each part ought to be delivered to the payee.

The custom of merchants requires that bills of exchange, whether foreign or inland, should be in writing.

It seems extremely doubtful at what period, or by whom, *foreign bills of exchange* were first invented; although it appears tolerably certain that they were in use in the fourteenth century; and an inference drawn from the statute 5 Rich. II. st. 1, c. 2 warrants the conclusion that foreign bills were introduced into England previous to the year 1381.

Inland bills of exchange (which were so called because they were drawn as well as payable in England) did not originate at a much earlier period than the reign of Charles II.,—probably about the year 1645, when banking began to be extensively carried on by the goldsmiths.

1. *Form of an Inland Bill of Exchange.*

100\frac{00}{100}$.[3] Toronto,[1] 1 January, 1863.[2]

Two months after date,[4] pay to me,[5] or order,[6] (*or* "to my order," *or* "to E. F. or order"), at,

&c.,[7] the sum of one hundred dollars,[8] value received.[9]

A. B. (*the drawer*).[10]

To C. D., Esq. (*the drawee*),
Montreal.[11]

Accepted C. D.,[12] payable at Commercial Bank.
London.[13]

[*Indorsed*][14] A. B. (*or* "E. F.") (*first indorser.*)
G. H. (*second indorser.*)

REMARKS ON THIS FORM.

(1) The place at which the bill is dated, or is supposed to be drawn.
(2) The date of the bill.
(3) The sum superscribed in figures.
(4) The statement of the time when payable.
(5) The description of the payee.
(6) "Or order."
(7) "At," &c.
(8) Statement of the sum payable.
(9) "Value received."
(10) The drawer's signature.
(11) The direction to the drawee.
(12) The form of the acceptance.
(13) "Payable at," &c.
(14) Form of the indorsements.

1. The *Place at* which the Bill is dated, or is supposed to *be drawn.*

It is usual to date the bill at the city or place where it is drawn; but this is not necessary. No

place need be stated. If a place be stated, it will be *presumed* that the drawer resides therein; and if only a general description be given, as "London," or "Montreal," it will be sufficient, in the absence of information, or ready means of acquiring intelligence, as to the particular street, &c. in which the drawer resides, to give *him* notice of dishonor by letter addressed to him merely "London," or "Montreal."

2. The *Date* of the Bill.

This is not essential, although the bill be payable after date. If there be no date, or an impossible date, the time of drawing or issuing the instrument will be reckoned the date, and will give the criterion when the bill is due.

A bill of exchange may legally be post-dated. The restrictions against post-dating in England have reference to stamp duties merely, and do not apply to Canada. Even in England, although a penalty of one hundred pounds is incurred by post-dating, yet the bill will be good in the hands of a *bona fide* holder.

As against third persons the date is not even presumptive evidence that the bill was drawn on the day expressed; nor will it afford proof of the time of indorsement.

A bill may legally be drawn and dated on a Sunday.

3. The Sum *superscribed* in Figures.

This superscription is unnecessary, but usual. If it were contradictory to the body of the bill, it would

be rejected: on the other hand, if in the body of the bill there were an omission of the word *dollars*, the superscription would aid the mistake by supplying the word.

4. The Statement of the *Time* when payable.

It is not *necessary* to state on the face of the bill any time for payment of the amount. If no time be mentioned, the bill is payable immediately, or on demand, that is, on presentation to the drawer for payment.

If the time of payment be fixed, it is not material that the day is ever so distant; nor is it any objection that the bill or note is payable at a specified time after *notice* from the holder.

But it is a rule that a bill or note is void, even between the original parties thereto, if the payment of the money is made, by the terms of the instrument on the face of it, or by a *written* contemporaneous indorsement on the instrument, dependent upon a *condition*, or upon the *contingency* of the happening of an event which may never occur; and the defect is not cured by the fulfilment of the condition or the occurrence of the event.

Thus, if an instrument be drawn or made for the payment of a sum of money (being the price of certain goods), "*upon condition* that if any dispute should arise between, &c. respecting the goods, the note should be void;" or "*provided* the terms mentioned in certain letters shall be complied with;" or "*provided* T. S. shall not pay;" or "provided D. M. shall not return to England, or his death be duly

certified, before the appointed time for payment;" or "when I am able;" or "when J. S. shall marry;" or "when an estate, &c. shall be sold;" it is not valid as a bill or note.

An instrument is not valid as a bill or note if the sum specified is not payable at all events, but is expressed to be secured merely as a set-off against, or deduction from, another demand.

And the instrument is considered uncertain, contingent, and void, as a bill or note, if the money is to be paid out of a specified *fund*, which may never be realized or be adequate to the purpose; as, "out of rents;" or "out of money when received;" or "out of my growing subsistence;" or "out of the produce of goods when sold;" or "out of *drafts* on a banker;" or "when they shall be paid."

But, however uncertain it may be *when* the event on which the time for payment is made dependent will occur, if it be certain that it *must* transpire at some period, the bill or note will be good; as if the payment is to be made within one month "after the *death*" of a party; or "when J. S. shall come *of age*" (naming the day); so that his death would not discharge the liability.

5. The Description of the Payee.

The bill may be made payable to the drawer, or to a third person. It is not essential that either should be named, provided the bill be made payable to the order of the drawer (when in effect it is payable to him), or to bearer.

But alternative words on the face of the instru-

ment, as to the party to whom payment is to be made, will invalidate the bill; as, if it be payable to A. *or* B.

If, on framing a bill, a blank or space be left for the name of the payee, the acceptor and drawer tacitly authorize a *bona fide* holder, afterwards taking the bill from the drawer or his transferee, to supply his own name, so as to give effect to the instrument as a bill payable to himself; and the objection of uncertainty, which would otherwise prevail, is thus obviated.

If the name of a *fictitious* person be introduced as *payee*, the bill is inoperative in the hands of a party who takes it with knowledge of that fact; but the parties to the bill who were aware of the circumstance shall not be permitted to avail themselves of the irregularity; and against them the bill, in the hands of an innocent holder for value, may be treated as a bill payable to *bearer*.

If the bill be *drawn* in the name of a fictitious person, payable to the order of the drawer, with the acceptor's knowledge, the latter may be charged by a *bona fide* holder as undertaking to pay to the order of the person who signed as the drawer.

6. "*Or Order*," &c.

Bills are generally payable to the *order* of the drawer or payee, or they may be payable to him or bearer, or to bearer generally.

Great attention is due to this part of the instrument, as the distinguishing quality of a bill—its negotiability—altogether depends upon the introduction of express words rendering it transferable.

In this country it is now decided not to be essential that a bill should be made negotiable. It may be payable only to the drawer or a third party.

If the words "or order," or "bearer," be omitted, the bill cannot be negotiated so as to become available against the acceptor. It is available only against the assignor who indorses it to the holder. It will therefore be remarked that the express assent of the original parties is necessary to attach to a bill its more important and peculiar attribute.

7. "*At*," &c.

Although the bill be *accepted* payable at a particular place in pursuance of the drawer's request, yet if the acceptor do not use the restrictive words "and not otherwise or elsewhere," according to the statute Cons. St. U. C., c. 42, s. 5, the acceptance is, as to him, deemed to be *general;* and the *acceptor* is, it seems, responsible, although no presentment be made at the specified place.

But the *drawer* and indorsers are not liable in such case, unless the bill be duly presented at the place designated by the acceptor, in pursuance of the direction in the body of the bill, confirmed and rendered specific by the acceptance.

If the drawer, in the body of the instrument, makes it payable, not at any specific place, but generally in some town, the direction becomes inoperative, if the bill be not accepted or the acceptance be general, without mentioning any particular street or place in such town.

Sometimes the drawer makes the bill payable at his

own house. This seems to be injudicious; it having been held that the circumstance raises a presumption that the bill was accepted for his accommodation, that he is the party to pay, and consequently that he is not entitled to notice of dishonor, unless he proves that he really had effects with the drawee.

8. Statement of the *Sum* payable.

This is generally expressed in words at length; but figures would suffice. We have seen that the superscription of the sum in the margin may aid an omission in the body of the bill of the word "dollars."

A bill, &c., is not valid unless it be *solely* for the payment of a *specific* sum of *money*.

Therefore a bill "to pay A. B. 100*l*." is void if there be added the words, "and to deliver up a horse," &c.; or the words, "and all other sums that may be due to him;" or, "first deducting thereout any sum J. J. may owe me." And uncertainty as to any part of the amount to be paid will invalidate the instrument as a note.

9. "*Value received.*"

These words (though usual) are not necessary to give validity or force to the instrument as a bill of exchange.

Consideration being *presumed* by law for the drawing and indorsing a bill, no argument or inference that it does not exist can be founded on the absence of the words "value received:" the presumption that a consideration existed still arises.

The precise meaning of these words, in reference

to the parties by whom and from whom the value was received, depends upon the form of the bill. If it be payable to the drawer or his order, the words "value received" import that the drawee has received consideration from the drawer; if it be payable to a third person, they signify that the drawer has received value from him to the amount drawn for.

The nature of the value or consideration may be stated, without prejudice to the validity of the instrument.

10. *The Drawer's Signature.*

The bill would, evidently, be imperfect if the drawer's name did not appear on the face of the instrument. A formal signature at the foot of the bill is not essential. If the drawer himself writes the bill in this shape, "*I, A. B.*, request you to pay," &c., no doubt the instrument would be good, although not undersigned.

The signature may be in pencil; or by a mark or cross, by way of signature; or it may be printed.

When an agent draws a bill for his principal, the signature should be in the name of the latter; or in the name of the agent, thus: "A. B." (*the agent*), "for C. D." (*the principal*); or thus: "C. D." (*the principal*), "per procuration, A. B." (*the agent*). If an agent merely sign his own name only, as drawer, he will become personally liable on the bill, and the principal will not incur any responsibility thereon.

If there be several drawers, and they be *partners*, either the name of the firm may be subscribed by one of the members or an agent of the firm, or the signa-

ture may be by the partner or agent "for" the firm by its usual title.

If the drawers be *not partners*, each should separately sign by himself or by an agent appointed by him for the purpose. In this case one drawer has no *implied* authority to sign for the others.

11. The *Direction to the Drawee.*

This *formal* direction is not necessary; for, in a case in which instead of the usual address to the drawee the words "payable at No. 1 Wilmot Street" only were inserted, it was held that a person who resided at that place and who accepted the bill was liable thereon as acceptor. But this case does not show that the instrument can be perfect, *as a bill*, although it do not appear on the face of the instrument who is the drawee. And it is clear that the absence of such information, to be obtained from the instrument itself, would render the instrument inoperative as a bill.

Care should be taken to address the bill to each person (if more than one) who has undertaken to accept the bill. There cannot be successive acceptors or a second acceptor of the same bill after a perfect acceptance, unless the second be an acceptor for honor.

If, therefore, a bill be directed to A. only and be accepted by him, and B. afterwards accept it, he is not liable thereon as acceptor.

12. The *Form* of the *Acceptance.*

The acceptance may be upon any part of the bill, and it may be effected by the drawer merely writing

his name or the word "accepted;" or, it seems, by his merely writing thereon "presented," or the day of the month, or a direction to a third person to pay the amount.

An acceptance may be in pencil, or by making a mark in lieu of a signature with intent to accept.

The statute Cons. St. U. C., c. 42, s. 7, requires that bills shall be accepted *in writing upon the bill itself.* But this statute does not require the *signature* of the drawee.

The holder may insist, as against the drawer and indorser, upon having the *absolute* acceptance of the drawee to the *full extent* and in the very terms of the bill as drawn, and, if refused, may treat the bill as dishonored. But he may, if he please, waive such acceptance, and take a *conditional* or *partial* or *limited* acceptance, and it will be valid against the acceptor; and if the other parties have notice of the acceptance offered, and consent thereto, they also will be bound.

Here we may observe the distinction that, although a bill cannot be *drawn*, it may be *accepted*, payable upon a *condition* or *contingency*.

The acceptance of a bill conditional as to the *place* of payment will be considered under the next division.

A bill may be accepted for *part only* of the sum mentioned therein; or the *mode* of payment may be varied by making part of the amount payable in bills; or the *time* of payment may be altered by the acceptance.

A bill may be accepted after it has been dishonored, and is then payable on demand.

The acceptance may be *revoked* or *cancelled* by the drawee at any time before it has been called for by the holder and before the drawee has parted with it or delivered it over to the holder.

We have seen that, if a bill is complete as to acceptance, that is, has been accepted by the party on whom it is drawn, the custom of merchants does not authorize any second or further acceptance by another person. But, if the drawee before acceptance become insolvent, &c., or if he refuse to accept, another person may accept for the honor of any party to the bill; which is called an acceptance *for honor*, in the case of an inland bill, and is termed an acceptance *supra protest*, in the case of a foreign bill, from the circumstance of a protest in such instance preceding the acceptance.

If a party whose acceptance to a bill has been forged, on the bill being presented to him by a third person, with a request to know if the bill has been accepted by him, answer (though *bona fide*) that such is the case, he is liable as acceptor.

13. "*Payable at*," &c.

The introduction of these words into an acceptance led to great difference of opinion in the courts as to their legal operation, before the passing of the English Act 1 & 2 Geo. IV., c. 78 (Canadian Act, Cons. St. U. C., c. 42, founded on 7 Will. II., c. 5).

It is clear that the acceptor need not state where the bill is to be presented for payment. He may accept generally. The question which divided the courts was, whether the acceptor, by using the words "payable at," &c., incurred only a restricted and con-

ditional or qualified liability, that is, was not responsible unless the bill were presented for payment at the place specified; or whether the words were a mere notification to the holder that he might, *if he pleased*, there call for payment at his *election*, without being *compelled* to do so.

The 1 & 2 Geo. IV. provides that an acceptance of a bill payable at a banker's or other specified place shall be deemed merely a general acceptance, unless the acceptor state that it is payable there "*only and not otherwise or elsewhere;*" and the Canadian act is in the same words.

14. *Form, &c., of the Indorsements.*

The indorsements may be upon the face or at the back of the bill. They may be written in pencil.

The indorsement may be by the mere signature of the party transferring, without any other words. This is called an indorsement IN BLANK.

Or before his signature the party may state, "Pay A. B.," or, "Pay A. B., or order." This is termed a *special* indorsement, or indorsement *in full.*

Bills and notes may be indorsed *before* they are complete. And a bill may be indorsed before due, so as to charge the drawer, &c., although he had been discharged as to the *indorser*, by the latter having *previously presented* the bill for acceptance and omitted, on the non-acceptance, to give the drawer notice thereof; provided the indorsee had no notice of such fact by noting on the bill or otherwise, and took it for value. So, if a bill *not due* be paid, but be left in the holder's hands, a person taking it be-

fore it is due, *bona fide* and without notice, may sue thereon.

And a bill may legally be indorsed *after* it is *due*, and has been *dishonored;* but not after it has been duly paid by the acceptor.

But there is this distinction between bills indorsed before, and *after*, they are due. If a note indorsed be not due at the time, it carries no suspicion whatever on the face of it, and the party receives it on its own intrinsic credit. But, if it is over-due, it is out of the common course of dealing, and does give rise to suspicion. And therefore he who takes a bill after it has arrived at maturity takes it subject to all the legal *defences* that could have been made by any previous holder, arising out of and connected with the bill or note transaction itself, and not relating, as in the case of a set-off, merely to *collateral* matter.

If, therefore, the *party transferring* could not have sued the acceptor upon the bill, because it was given upon a smuggling, or other illegal, consideration; or because it had been paid or settled in account with the acceptor; or because he (the party transferring) was only an agent to receive the money for his principal, &c.; or because he had obtained the bill by fraud, &c.; the transfer, *after* the bill or note has become due, will give the transferree no better title than the assignor possessed; and, in an action by the latter, either of these defences will avail the acceptor.

But if the *immediate* party transferring an overdue bill might have sued thereon, as if *he* took the

bill by indorsement, &c. *bona fide* for value before it was due, the holder is invested with his rights; and it is no defence that the bill was accepted by the defendant, &c., upon a smuggling contract, &c., between him and the drawer.

A bill may be indorsed conditionally, thus:—"Pay the within sum to A. B., or order, *upon my* name appearing in the Gazette as ensign in any regiment of the line between the 1st and 64th, if within two months from this date." Upon such an indorsement neither A. B. nor his indorsees can acquire any right to the money, unless the event specified has occurred.

An indorsement cannot be made as to *part* only of the sum due, so as to subject the acceptor to two actions without his consent; but if the partial indorsement be *before* the acceptance, and the drawee accept generally, he is supposed to assent to the double liability (that is, to one party as to one portion, and to another as to the residue of the bill), and the indorsement will be good. If part has been *satisfied*, the bill may be indorsed for the remainder.

An indorsement may be *restrictive*, and stop the negotiability of the bill; as, "Pay to my servant *for my use*," or, "Pay *W. S., or order, for my use*," &c.; or it may be *qualified* (as "*sans recours*"), so as to exempt the indorser from personal liability in case of dishonor.

The mode in which an *agent* or *partner* should *indorse* a bill is similar, in general, to that which should be adopted on his drawing a bill.

A partner may transfer in his own name only, and

thereby charge the firm if such a mode of indorsement as been usual. If there be several holders, not partners, *each* should indorse.

CHAPTER VII.

Of Bonds.

A BOND, or obligation, is a deed, whereby the maker (called the *obligor*) obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to another (called the *obligee*) at an appointed day. Such a Bond is called a single bond. A condition is, however, generally added, that if the obligor performs some particular act the obligation shall be void, otherwise it shall remain in full force and virtue.

The penalty in a Bond is usually double the amount of the real debt, for the purpose of securing the full debt with interest and costs, if necessary.

Whenever a specified sum is agreed upon by the parties for *stipulated* or *liquidated damages*, in the event of a failure to comply with the conditions of a bond, such specific sum is the amount which the party in fault is to pay.

All that can be recovered of a *penalty* in a bond in addition to the amount of the debt is interest and costs; and, as the general inclination of courts is to regard the sum mentioned as a penalty, care must be exercised to state distinctly and unmistakably the

fact that the sum agreed upon is in the nature of stipulated or liquidated damages, if the whole sum mentioned is intended as a forfeiture in case of failure.

Bond.

(*Single.— Without Condition.*)

KNOW ALL MEN BY THESE PRESENTS, that I [*debtor*], of [*such a place*], am held and firmly bound to [*creditor*], of [*such a place*], in the penal sum of 1000*l.*, of lawful money of Canada, to be paid to the said [*creditor*], or to his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made I bind myself, my *heirs*, executors, and administrators, and every of them, firmly by these presents. SEALED with my seal. DATED this 1st day of January, 1848.

A. B. [L. S.]

Sealed and delivered in the presence of .

C. D.

Money Bond.

KNOW ALL MEN BY THESE PRESENTS, that held and firmly bound unto in the penal sum of , of lawful money of Canada, to be paid to the said , or to certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, bind heirs, executors, and administrators, forever, firmly by these presents.

SEALED with seal. DATED this day of , in the year of our Lord one thousand eight hundred and .

THE CONDITION of the above written Bond or obligation is such, that if the above bounden , heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto , executors, administrators, or assigns, the just and full sum of , of lawful money of Canada, with interest thereon, at the rate of per cent. per annum, on the days and times and in the manner following, that is to say: , without any deduction, defalcation, or abatement whatsoever, THEN the said Bond or obligation to be void, otherwise to be and remain in full force and virtue.

A. B. [L. S.]

Signed, sealed, and delivered in the presence of .

C. D.

Bond to Convey Land.

KNOW ALL MEN BY THESE PRESENTS, that held and firmly bound unto in the penal sum of , of lawful money of Canada, to be paid to the said , or to certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, bind heirs, executors, and administrators, and every of them, forever, firmly by these presents. SEALED with seal. DATED this day of , in the year of our Lord one thousand eight hundred and .

WHEREAS the said ha contracted with the above bounden , for the absolute purchase, in fee simple, free from all incumbrances, of the following parcel or tract of land, hereditaments, and

premises, that is to say: AND WHEREAS the said ha agreed to pay therefor the sum of , of lawful money of Canada, at the times and in manner following, that is to say:

NOW, THE CONDITION of the above obligation is such, that if the said , heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, to the above bounden , executors, administrators, or assigns, the sum of , at the times and in manner aforesaid, then if the above bounden , heirs and assigns, shall, by good and sufficient Deed or Deeds of Conveyance, in fee simple, convey and assure, or cause to be conveyed and assured, unto the said , heirs and assigns, forever, the said premises hereinbefore described, free from all incumbrances, then the above obligation shall be void, otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered }
in the presence of . }

Bond for Payment of Purchase Money.

KNOW ALL MEN BY THESE PRESENTS, that held and firmly bound unto in the penal sum of , of lawful money of Canada, to be paid to the said , or to certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, bind heirs, executors, and administrators, and every of them, forever, firmly by these presents.

SEALED with seal. DATED this day of ,

in the year of our Lord one thousand eight hundred and .

WHEREAS the above bounden ha contracted with the said for the absolute purchase, in fee simple, free from all incumbrances, of the following parcel or tract of land, hereditaments, and premises, that is to say:

AND WHEREAS the above bounden ha agreed to pay therefor the sum of , of lawful money of Canada, at the times and in manner following, that is to say:

AND WHEREAS, upon the treaty for the said purchase, it was agreed that the above bounden should enter into the above Bond or obligation for payment of the said purchase money, or the unpaid part thereof, and interest, in manner aforesaid, and be let into possession of the said lands and premises, and receipt of the rents and profits thereof from the day of the date hereof.

NOW, THE CONDITION of the above obligation is such, that if the above bounden , heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, to the said , executors, administrators, or assigns, the whole of the said purchase money and interest thereon as aforesaid, at the times and in manner aforesaid, without making any deduction, defalcation, or abatement thereout on any account whatsoever, then the above obligation shall be void, otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered in the presence of .

Bond of Indemnity.

KNOW ALL MEN BY THESE PRESENTS, that held and firmly bound unto in the penal sum of , of lawful money of Canada, to be paid to the said , or to certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, binds heirs, executors, administrators, and every of them, forever, firmly by these presents. SEALED with seal. DATED this day of , in the year of our Lord one thousand eight hundred and .

THE CONDITION of the above written Bond or obligation is such, that if the above bounden obligor, his heirs, executors, and administrators, do and shall, from time to time, and at all times hereafter, hold and keep harmless, and fully indemnified, the said obligee, his heirs, executors, and administrators, and his and their lands and tenements, goods, chattels, and effects, of, from, and against all loss, costs, charges, damages, and expenses which the said obligee, his heirs, executors, or administrators, may at any time hereafter bear, sustain, be at, or be put to, for or by reason or on account of , or any thing in any manner relating thereto, THEN the above written Bond or obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered }
in the presence of . }

Bond from a Lessee and his Surety to pay Rent according to Lease.

KNOW ALL MEN BY THESE PRESENTS, that we, C. D., of , in the County of , and Province of Canada, Carpenter, and E. F., of the same place, Butcher, are held and firmly bound unto A. B., of , in the County of , and Province of Canada, Esquire, in the penal sum of , of lawful money of Canada, to be paid to the said A. B., or to his certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, our, and each of our, heirs, executors, and administrators, forever, firmly by these presents. SEALED with our seals. DATED this day of , in the year of our Lord one thousand eight hundred and .

WHEREAS the above named A. B., by his Indenture of Lease, bearing even date with and executed before the above written obligation, for the consideration in the said lease mentioned, hath demised to the above bounden C. D. a certain saw-mill, situate at, &c. To HOLD unto the said C. D., his executors, administrators, and assigns, for the term of years from thence next ensuing, determinable, nevertheless, at the end of the first years of the said term, if the said C. D., his executors, administrators, or assigns, shall give months' notice thereof, in manner therein mentioned, at and under the yearly rent of , payable quarterly, in manner as therein expressed, as by the said lease will more fully appear. NOW, THE CONDITION of the above written obligation

is such, that if the above bounden C. D. and E. F., or either of them, their, or either of their, heirs, executors, or administrators, shall and do, during the continuance of the said recited lease, well and truly pay, or cause to be paid, the said yearly rent or sum of unto him, the said A. B., his heirs or assigns, by four equal quarterly payments of each, on the several days following, that is to say, the day of , the day of , the day of , and the day of , in each and every year during the said demise, or within days next after every of the said days or times of payment, according to the true intent and meaning of the said recited lease, the first quarterly payment to be made on the day of next, then the above written obligations shall be void and of no effect, but if default shall happen to be made of or in any of the said quarterly payments, then the same shall remain in full force.

Signed, sealed, &c.

CHAPTER VIII.

Of Chattel Mortgages.

A CHATTEL mortgage is a conveyance of movable property, as household furniture, stock in trade, &c., by way of security. A lengthy dissertation upon the laws affecting chattel mortgages would be interesting to none but lawyers; but some enactments regulating their registration, &c., must be noticed.

It often happened that chattel mortgages were made use of in order to deprive a creditor of the fruits of his execution. When a debtor became involved, and desirous of preventing the seizure of his goods and chattels by the bailiff, it was quite common for the debtor to make a fictitious conveyance of them to some friend, by way of security for a pretended loan. When a seizure was made, the friend stepped in and claimed payment of the mortgage, which, being always for an amount equal to the full value of the goods, had the effect of preventing the creditor from realizing any thing at all.

To remedy this evil, the Canadian Legislature, in 1857, passed an Act of Parliament (since consolidated, and being now cap. 45 of the Consolidated Statutes for Upper Canada), the sections of which, so far as it is necessary to notice them here, are as follows:—

1. Every mortgage of goods and chattels, made

in Upper Canada, which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, or a true copy thereof, shall, within five days from the execution thereof, be registered as hereinafter provided, together with the affidavit of a witness thereto, of the due execution of such mortgage or conveyance, or of the due execution of the mortgage or conveyance of which the copy filed purports to be a copy, and also with the affidavit of the mortgagee or his agent, if such agent be aware of all the circumstances connected therewith and properly authorized in writing to take such mortgage (in which case a copy of such authority shall be registered therewith.)

2. Such last-mentioned affidavit, whether of the mortgagee or his agent, shall state that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that it was executed in good faith, and for the express purpose of securing the payment of money justly due or accruing due, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him.

3. In case such mortgage or conveyance and affidavits be not registered as hereinbefore provided, the mortgage or conveyance shall be absolutely null and void as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith for valuable consideration.

5. In case of an agreement in writing for future advances for the purpose of enabling the borrower to enter into and carry on business with such advances, the time of repayment thereof not being longer than one year from the making of the agreement, and in case of a mortgage of goods and chattels for securing the mortgagee repayment of such advances, or in case of a mortgage of goods and chattels for securing the mortgagee against the indorsement of any bills or promissory notes or any other liability by him incurred for the mortgagor, not extending for a longer period than one year from the date of such mortgage, and in case the mortgage is executed in good faith, and sets forth fully, by recital or otherwise, the terms, nature, and effect of the agreement, and the amount of liability intended to be created, and in case such mortgage is accompanied by the affidavit of a witness thereto of the due execution thereof, and by the affidavit of the mortgagee, or in case the agreement has been entered into and the mortgage taken by an agent duly authorized in writing to make such agreement and to take such mortgage, and if the agent is aware of the circumstances connected therewith, then, if accompanied by the affidavit of such agent, such affidavit, whether of the mortgagee or his agent, stating that the mortgage truly sets forth the agreement entered into between the parties thereto, and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage, and that such mortgage is executed in good faith, and for the express purpose of securing the mortgagee repay-

ment of his advances, or against the payment of the amount of his liability for the mortgagor, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein, against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against such mortgagor, and in case such mortgage is registered as hereinafter provided, the same shall be as valid and binding as mortgages mentioned in the preceding section of this act.

6. All the instruments mentioned in the act shall contain such sufficient and full description of the goods and chattels that the same may be thereby readily and easily known and distinguished.

7. The instruments mentioned in the preceding sections shall be registered in the office of the clerk of the county court of the county or union of counties where the mortgagor or bargainor, if a resident in Upper Canada, resides at the time of the execution thereof, and if he be not a resident, then in the office of the clerk of the county court of the county or union of counties where the property so mortgaged or sold is at the time of the execution of such instrument.

9. In the event of the permanent removal of goods and chattels mortgaged as aforesaid from the county or union of counties in which they were at the time of the execution of the mortgage, to another county or union of counties before the payment and discharge of the mortgage, a certified copy of such mortgage, under the hand of the clerk of the county court in whose office it was first registered, and

under the seal of the said court, and of the affidavits and documents and instruments relating thereto filed in such office, shall be filed with the clerk of the county court of the county or union of counties to which such goods and chattels are removed, within two months from such removal, otherwise the said goods and chattels shall be liable to seizure and sale under execution, and in such case the mortgage shall be null and void as against subsequent purchasers and mortgagees for valuable consideration as if never executed.

10. Every mortgage, or copy thereof, filed in pursuance of this act, shall cease to be valid as against the creditors of the persons making the same, and against subsequent purchasers or mortgagees in good faith for valuable consideration, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property claimed by virtue thereof, and a full statement of the amount still due for principal and interest thereon, and of all payments made on account thereof, be again filed in the office of the clerk of the said county court of the county or union of counties wherein such goods and chattels may be then situate, with an affidavit of the mortgagee, or of his agent duly authorized in writing for that purpose (which authority shall be filed therewith), stating that such statements are true, and that the said mortgage has not been kept on foot for any fraudulent purpose.

12. All affidavits and affirmations required by this act shall be taken and administered by any judge or commissioner of the Courts of Queen's Bench or Common Pleas, or justice of the peace, in Upper Canada; and the sum of twenty cents shall be paid for each and every oath thus administered.

The effect of these enactments may be shortly summed up thus: every chattel mortgage must be filed with the clerk of the county court within five days after execution; the instrument must be accompanied by an affidavit of its due execution, and another affidavit of the good faith of the transaction. The last-mentioned affidavit may be made by an agent, if he be specially appointed in writing for the purpose. These affidavits may be sworn to before a commissioner of the Queen's Bench, &c., or before a justice of the peace.

If the mortgage is intended to secure future advances, or as collateral security against the indorsement of accommodation bills or notes, the requirements of section 5 must be carefully observed.

Finally, every chattel mortgage requires to be renewed each year. Section 10 points out the mode. A statement showing the interest of the mortgagee, and the amount remaining due, must be filed within thirty days of the expiration of the year.

The following forms will be found applicable to most occasions:—

Chattel Mortgage.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hun-

dred and , BETWEEN , of the one part, and , of the other part, WITNESSETH, that the said party of the first part, for and in consideration of the sum of , of lawful money of Canada, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Hath granted, bargained, sold, and assigned, and by these presents doth grant, bargain, sell, and assign, unto the said party of the second part, his executors, administrators, and assigns, ALL AND SINGULAR the goods, chattels, furniture, and household stuff hereinafter particularly mentioned and expressed, that is to say:

TO HAVE AND TO HOLD, all and singular, the said goods and chattels hereinbefore granted, bargained, sold, and assigned or mentioned, or intended so to be, unto the said party of the second part, his executors, administrators, and assigns, to the only proper use and behoof of the said party of the second part, his executors, administrators, and assigns, forever:

PROVIDED ALWAYS, and these presents are upon this condition, that if the said party of the first part, his executors or administrators, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators, or assigns, the full sum of , with legal interest for the same from the date hereof , then these presents, and every matter and thing herein contained, shall cease, determine, and be utterly void to all intents and purposes, any thing

herein contained to the contrary thereof in any wise notwithstanding.

And the said party of the first part, for executors and administrators, shall and will warrant, and forever defend, by these presents, all and singular the said goods, chattels, and property by these presents unto the said party of the second part, executors, administrators, and assigns, against , the said party of the first part, executors and administrators, and against all and every other person and persons whomsoever. And the said party of the first part doth hereby, for executors and administrators, covenant, promise, and agree to and with the said party of the second part, executors, administrators, and assigns, that , the said party of the first part, executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said party of the second part, executors, administrators, and assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, on the day and time and in the manner above limited for the payment thereof.

And also, that in case default shall be made in the payment of the said sum of money in the said proviso mentioned, or the interest thereon, or any part thereof, or in case the said party of the first part shall attempt to sell or dispose of, or in any way part with the possession of, the said goods and chattels, or any of them, or to remove the same or any part thereof out of the county of , without the consent of the said party of the second part,

executors, administrators, or assigns, to such sale, removal, or disposal thereof first had and obtained in writing, then and in such case it shall and may be lawful for the said party of the second part, executors, administrators, or assigns, with or their servant or servants, and with such other assistant or assistants as may require, at any time during the day to enter into and upon any lands, tenements, houses, and premises, wheresoever and whatsoever, where the said goods and chattels, or any part thereof, may be, and for such persons to break and force open any doors, locks, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures, and places, and any door, lock, bolt, fastening, hinge, gate, fence, house, building, enclosure, and place, for the purpose of taking possession of and removing the said goods and chattels, and upon and from and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful, and the said party of the second part, executors, administrators, or assigns, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels, or any of them, or any part thereof, at public auction or private sale, as to them or any of them may seem meet, And from and out of the proceeds of such sale in the first place to pay and reimburse or themselves all such sums and sum of money as may then be due by virtue of these presents, and all such expenses as may have been incurred, by the said party of the second part, executors, administrators, or assigns, in consequence of the default, neglect, or

failures of the said party of the first part, executors, administrators, or assigns, in payment of the said sum of money with interest thereon as above mentioned, or in consequence of such sale or removal as above mentioned, and in the next place to pay unto the said party of the first part, executors, administrators, and assigns, all such surplus as may remain after such sale, and after payment of all such sum and sums of money and interest thereon as may be due by virtue of these presents at the time of such seizure, and after payment of the costs, charges, and expenses incurred by such seizure and sale as aforesaid.

PROVIDED ALWAYS, nevertheless, that it shall not be incumbent on the said party of the second part, executors, administrators, and assigns, to sell and dispose of the said goods and chattels, but that in case of default in payment of the said sum of money with interest thereon as aforesaid, it shall and may be lawful for the said party of the second part, executors, administrators, and assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said goods and chattels, without the let, molestation, eviction, hindrance, or interruption of , the said party of the first part, executors, administrators, or assigns, or any of them, or any other persons or person whomsoever.

AND the said party of the first part doth hereby further covenant, promise, and agree to and with the said party of the second part, executors, administrators, and assigns, that in case the sum of money realized under any such sale as above men-

tioned shall not be sufficient to pay the whole amount due at the time of such sale, that , the said party of the first part, executors or administrators, shall and will forthwith pay or cause to be paid unto the said party of the second part, executors, administrators, and assigns, all such sum or sums of money, with interest thereon, as may then be remaining due.

And the said party of the first part doth put the said party of the second part in full possession of the said goods and chattels by delivering to , in the name of all the said goods and chattels at the sealing and delivery hereof.

In Witness Whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

A. B. [L. S.]

Signed, sealed, and delivered in the presence of }

C. D.

Affidavit of Mortgagee.

Canada. Count of , to wit: I, A. B., of the of , in the Count of , in the within Bill of Sale, by way of mortgage named, make oath and say, that , the mortgagor in the annexed Bill of Sale, by way of mortgaged named, is justly and truly indebted to me, this deponent , the mortgagee therein named, in the sum of , mentioned therein. That the said Bill of Sale, by way of Mortgage, was executed in good faith, and for the express purpose of securing the payment of the money so justly due as aforesaid, and not for the

purpose of protecting the goods and chattels mentioned in the said Bill of Sale by way of mortgage, against the creditors of the said , the mortgagor therein named, or preventing the creditors of such mortgagor from obtaining payment of any claim against him. A. B.

Sworn before me, at the of , in the Count of , this day of , A. D. 186 .

E. F.,

J. P., or, A Commissioner for taking Affidavits in the Queen's Bench, in and for the Count of .

AFFIDAVIT OF WITNESS.

CANADA. Count of , to wit: I, C. D., of the of , in the Count of , make oath and say, that I was personally present, and did see the annexed Bill of Sale, by way of mortgage, duly signed, sealed, and delivered by , the parties thereto, and that the name , set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at , in the said Count of C. D.

Sworn before me, at the of , in the Count of , this day of , A. D. 186 .

E. F.,

J. P., or, A Commissioner for taking Affidavits in the Queen's Bench, in and for the Count of .

Chattel Mortgage.

ANOTHER FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , hereinafter called the mortgagor, of the one part, and , hereinafter called the mortgagee, of the other part. WHEREAS [*insert recitals*]:

NOW THIS INDENTURE WITNESSETH, that in consideration of the covenant hereinafter contained on the part of the said mortgagee, and for the better securing to him the payment of the sum of , and interest thereon, as hereinafter mentioned, HE, the said mortgagor, HATH bargained, sold, and assigned, and by these presents DOTH bargain, sell, and assign, unto the said mortgagee, his executors, administrators, and assigns, ALL and every the goods, utensils, implements, and things which are now in, about, and belonging to , situate and being in the County of , now in the occupation of the said mortgagor, and which are hereinafter particularly mentioned, enumerated, and described in the Schedule hereunder written, and all his right, title, interest, property, claim, and demand in and to the said goods, chattels, and premises, and every part and parcel thereof, TO HAVE, TAKE, RECEIVE, AND ENJOY the said goods, chattels, and premises hereby assigned, or expressed and intended so to be, unto the said mortgagee, his executors, administrators, and assigns, as his and their own property and effects.

PROVIDED NEVERTHELESS, and it is hereby de-

clared and agreed by and between the said parties to these presents, that in case the said mortgagor, his executors or administrators, shall and do well and truly pay, or cause to be paid, unto the said mortgagee, his executors, administrators, or assigns, the said sum of , with interest thereon at the rate of six pounds per centum per annum, on the day of , one thousand eight hundred and , or at such earlier day or time as the said mortgagee, his executors, administrators, or assigns, shall appoint for the payment thereof, in and by a Notice in writing to be given to the said mortgagor, his executors, or administrators, or left at his or their last or usual place of abode, at least before the day or time so to be appointed for payment as aforesaid. Then, and in such case, these presents, and every article, clause, and thing herein contained, shall cease, determine, and be absolutely void, any thing hereinbefore contained to the contrary in any wise notwithstanding. And it is hereby also declared and agreed by and between the said parties to these presents, that after default shall be made by the said mortgagor, his executors, or administrators in payment of the said sum of and interest, or any part thereof, contrary to the tenor and effect of the before mentioned proviso, then and in such case it shall be lawful for the said mortgagee, his executors, administrators, or assigns, peaceably and quietly to receive and take into his and their possession, and thenceforth to hold and enjoy, all and every the goods, chattels, and premises hereby assigned, or intended so to be. And also to sell and dispose of the same,

and every part thereof, for such price or prices as can be reasonably had or gotten for the same, and to receive and take the moneys to arise by such sale thereof, and thereby and therewith in the first place to retain and reimburse himself and themselves, the said mortgagee, his executors, administrators, or assigns, all costs, charges, and expenses which he or they may incur or be put unto in and about making any such sale or sales, and also in and about the receipt and recovery of the said sum of and interest respectively, and in the next place to retain and to reimburse himself and themselves, the said mortgagee, his executors, administrators, or assigns, the said sum of and the interest thereon, or so much and such part thereof as shall then remain unpaid and unsatisfied, and from and after full payment and satisfaction of such costs, charges, and expenses, sum and sums of money as aforesaid, to render to and account for the surplus (if any) of the money arising from such sale or sales as aforesaid unto the said mortgagor, his executors or administrators. And it is hereby declared and agreed, by and between the said parties to these presents, that until default shall happen to be made in payment of the said principal sum of , at the day or time hereinbefore appointed for payment thereof, contrary to the tenor and effect of the proviso hereinbefore contained, it shall be lawful for the said mortgagor, his executors or administrators, to hold, make use of, and possess the said goods, chattels, and premises hereby assigned, or intended so to be, without any manner of hindrance or disturbance of or by

him, the said mortgagee, his executors, administrators, or assigns. AND LASTLY, the said mortgagee, in consideration of the premises, doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said mortgagor, his executors and administrators, that he, the said mortgagee, his executors or administrators, shall not, nor will, until default shall be made in payment of the said sum of and interest, or some part thereof, on some or one of the days or times limited for payment thereof, in and by the proviso for redemption hereinbefore contained, bring, commence, or institute any action, suit, or process against the said mortgagor, his executors or administrators, for recovery of the said debt, or any part thereof.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

A. B. [L. S.]

Signed, sealed, and delivered by the said , in the presence of C. D.

The Schedule to which the foregoing Indenture refers:

[The two affidavits the same as in the last Form.]

Chattel Mortgage.

PROMISSORY NOTES.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, and

, of the second part: WHEREAS the said part of the second part ha indorsed the Promissory Note of the said part of the first part for the sum of , of lawful money of Canada, for the accommodation of the said part of the first part, which Promissory Note is in the words and figures following, that is to say: AND WHEREAS the said part of the first part ha agreed to enter into these presents for the purpose of indemnifying and saving harmless the said part of the second part of and from the payment of the said promissory note, or any part thereof, or any note or notes hereafter to be indorsed by the said part of the second part, for the accommodation of the said part of the first part, by way of renewal of the said recited note, or otherwise howsoever.

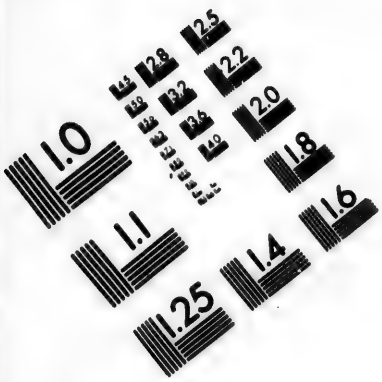
NOW THIS INDENTURE WITNESSETH, that the said part of the first part, for and in consideration of the premises and of the sum of one dollar, of lawful money of Canada, to in hand well and truly paid by the said part of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, and assigned, and by these presents do grant, bargain, sell, and assign, unto the said part of the second part, executors, administrators, and assigns, ALL AND SINGULAR the goods, chattels, furniture, and household stuff hereinafter particularly mentioned and expressed, that is to say:—

TO HAVE AND TO HOLD, all and singular, the goods and chattels hereinbefore granted, bargained,

sold, and assigned, or mentioned, or intended so to be, unto the said part of the second part, executors, administrators, and assigns, to the only proper use and behoof of the said part of the second part, executors, administrators, and assigns, forever: PROVIDED ALWAYS, and these presents are upon this condition, that if the said part of the first part, executors or administrators, do and shall well and truly pay, or cause to be paid, the said promissory note so as aforesaid indorsed by the said part of the second part, a copy of which said promissory note is set out in the recital to this Indenture, AND do and shall well and truly pay, or cause to be paid, all and every other note, or notes, which may hereafter be indorsed by the said part of the second part for the accomodation of the said part of the first part, by way of renewal of the said note in the said recital to this Indenture set forth, or otherwise howsoever, and indemnify and save harmless the said part of the second part from all loss. costs, charges, damages, or expenses in respect of the said note or renewals, , then these presents, and every matter and thing herein contained, shall cease, determine, and be utterly void to all intents and purposes, any thing herein contained to the contrary thereof in any wise notwithstanding. AND the said part of the first part, for executors and administrators, shall and will warrant, and forever defend, by these presents, all and singular the said goods, chattels, and property unto the said part of the second part, executors, administrators, and assigns, against , the said part of the first part, executors

and administrators, and against all and every other person or persons whomsoever. And the said part of the first part do hereby, for executors and administrators, covenant, promise, and agree to and with the said part of the second part, executors, administrators, and assigns, that , the said part of the first part, executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, the said promissory note in the above recital and proviso mentioned, and all future or other promissory notes which the said part of the second part shall hereafter indorse for the accommodation of the said part of the first part as aforesaid, and indemnify and save harmless the said part of the second part from all loss, costs, charges, damages, or expenses in respect thereof.

And also, that in case default shall be made in the payment of the said promissory note, or any future note or notes, as in the said proviso mentioned, or the interest thereon, or any part thereof, or otherwise as aforesaid, or in case the said part of the first part shall attempt to sell or dispose of, or in any way part with the possession of, the said goods and chattels, or any of them, or remove the same or any part thereof out of the Count of , without the consent of the said part of the second part, executors, administrators, or assigns, to such sale, removal, or disposal thereof, first had and obtained in writing, then and in such case it shall and may be lawful for the said part of the second part, executors, administrators, or assigns, with



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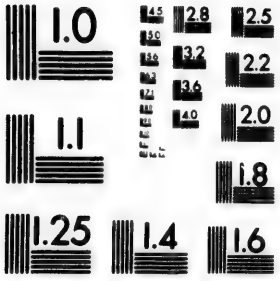

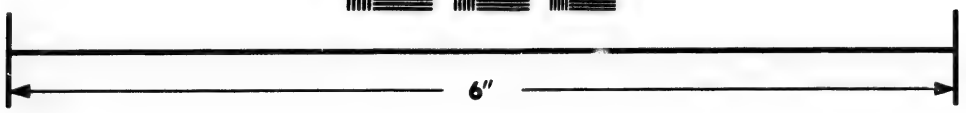

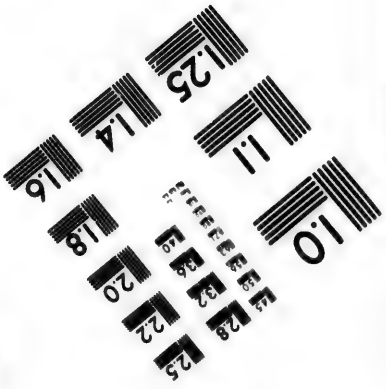

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(716) 872-4503

or their servant or servants, and with such other assistant or assistants as or they may require, at any time during the day to enter into and upon any lands, tenements, houses, and premises, wheresoever and whatsoever, where the said goods and chattels, or any part thereof, may be, and for such persons to break and force open any doors, locks, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures, and places, for the purpose of taking possession of and removing the said goods and chattels, and upon, and from, and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful, and the said part of the second part, executors, administrators, or assigns, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels, or any of them, or any part thereof, at public auction or private sale, as to or them, or any of them, may seem meet, and from and out of the proceeds of such sale in the first place to pay and reimburse or themselves all such sums and sum of money as may then be due by virtue of these presents on the said promissory note, or any future note or notes, as aforesaid, and all such expenses as may have been incurred by the said part of the second part, executors, administrators, or assigns, in consequence of the default, neglect, or failures of the said part of the first part, executors, administrators, or assigns, in payment of the said promissory note or notes as above mentioned, or in consequence of such sale or removal as above mentioned, and in the next

place to pay unto the said part of the first part, executors, administrators, or assigns, all of such surplus as may remain after such sale, and after payment of all such sum and sums of money, and interest thereon, as , the said part of the second part, shall be called upon to pay by reason of indorsing the said promissory note in the said recital and proviso mentioned, or any future note or notes to be indorsed by the said part of the second part for the said part of the first part, as aforesaid, at the time of such seizure, and after payment of the costs, charges, and expenses incurred by such seizure and sale, as aforesaid.

PROVIDED ALWAYS, nevertheless, that it shall not be incumbent on the said part of the second part, executors, administrators, and assigns, to sell and dispose of the said goods and chattels, but that in case of default in payment of the said note or notes as aforesaid, it shall and may be lawful for the said part of the second part, executors, administrators, and assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said goods and chattels without the let, molestation, eviction, hindrance, or interruption of , the said part of the first part, executors, administrators, or assigns, or any of them, or any other persons or person whomsoever. AND the said part of the first part do hereby further covenant, promise, and agree, to and with the said part of the second part, executors, administrators, and assigns, that in case the sum of money realized under any

such sale as above mentioned shall not be sufficient to pay the whole amount due on and by the said note or notes at the time of such sale, that , the said part of the first part, executors or administrators, shall and will forthwith pay, or cause to be paid, unto the said part of the second part, executors, administrators, and assigns, all such sum or sums of money, with interest thereon, as may then be remaining due upon or under the said note or notes. AND , the said part of the first part, put the said part of the second part in full possession of the said goods and chattels, by delivering to , in the name of , all the said goods and chattels, at the sealing and delivery hereof.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

A. B. [L. S.]

Signed, sealed, and delivered in the presence of }

C. D.

AFFIDAVIT OF MORTGAGEE.

CANADA, County of , to wit: I, A. B., of , in the within Bill of Sale by way of Mortgage named, make oath and say that such mortgage truly sets forth the agreement entered into between and the said mortgagor therein named, and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage,

and that the said bill of sale by way of mortgage was executed in good faith and for the express purpose of securing , the said mortgagee therein named, against the payment of the amount of such liability for the said mortgagor by reason of the said promissory note therein recited, or any future note or notes which may indorse for the accommodation of the said part of the first part, whether as renewals of the said recited promissory note or otherwise; AND not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor , nor to prevent such creditors from recovering any claims which they may have against such mortgagor .

A. B.

Sworn before me, at the of , in the Count of , this day of , A. D. 186 .

E. F.,

J. P., or A Commissioner for taking Affidavits in the Queen's Bench in and for the Count of .

AFFIDAVIT OF WITNESS.

CANADA, Count of , to wit: I, C. D., of , make oath and say that I was personally present and did see the annexed Bill of Sale by way of Mortgage duly signed, sealed, and delivered by , the parties thereto, and that I, this deponent, am a subscribing witness to the same; that the name , set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent,

and that the same was executed at , in the said County of .

C. D.

Sworn before me, at the of , in the Count of , this day of , A. D. 186 .

E. F.,

J. P., or A Commissioner for taking Affidavits in the Queen's Bench in and for the Count of .

Chattel Mortgage.

(FUTURE ADVANCES.)

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN of the first part, and , of the second part: WITNESSETH, that whereas [*here insert recitals, showing the terms, nature, and effect of the agreement, and the amount of the liability intended to be created*]. NOW, THEREFORE, the said party of the first part, for the consideration hereinbefore recited and in pursuance of the said agreement, hath granted, bargained, sold, and assigned, and by these presents doth grant, bargain, sell, and assign, unto the said party of the second part, his executors, administrators, and assigns, ALL AND SINGULAR the goods, chattels, furniture, and household stuffs hereinafter particularly mentioned and described in the Schedule hereunto annexed, marked A. To HAVE AND TO HOLD all and singular the said goods and chattels hereinbefore granted, bargained, sold, and assigned, or mentioned or intended so to be, unto the said

party of the second part, his executors, administrators, and assigns, to the sole and proper use and behoof of the said party of the second part, his executors, administrators, and assigns, forever. PROVIDED ALWAYS, and these presents are upon this condition, that if the said party of the first part, his executors or administrators, do and shall well and truly , and do and shall well and truly save harmless the said party of the second part from , then these presents and every matter and thing herein contained shall cease, determine, and be utterly void to all intents and purposes, any thing herein contained to the contrary thereof in any wise notwithstanding. AND the said party of the first part, for himself, his executors and administrators, all and singular the said goods, chattels, and property by these presents unto the said party of the second part, his executors, administrators, and assigns, against him, the said party of the first part, his heirs, executors, and administrators, and against all and every other person and persons whomsoever, shall and will warrant and forever defend by these presents. AND the said party of the first part doth hereby, for himself, his heirs, executors, and administrators, COVENANT, PROMISE, AND AGREE to and with the said party of the second part, his executors, administrators, and assigns, , or in case the said party of the first part shall attempt to sell or dispose of or in any way part with the possession of the said goods and chattels or any of them, or to remove the same or any part thereof out of the , without the consent of the said party of the second part, his executors, administrators, or assigns, to such sale, removal,

or disposal thereof first had and obtained in writing, then and in such case it shall and may be lawful for the said party of the second part, his executors, administrators, or assigns, with his or their servant or servants, and with such other assistant or assistants as he or they may require, at any time during the day to enter into and upon any lands, tenements, houses, and premises wheresoever the said goods and chattels or any part thereof may be, and for such persons to break and force open any doors, locks, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures, and places, for the purpose of taking possession of and removing the said goods and chattels; and upon and from and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful, and the said party of the second part, his executors, administrators, or assigns, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels, or any of them, or any part thereof, at public auction or private sale, as to him or any of them may seem meet, and from and out of the proceeds of such sale in the first place to pay and reimburse him and them all such sums and sum of money as may then be due by virtue of these presents, and all such expenses as may have been incurred by the said party of the second part, his executors, administrators, or assigns, in consequence of the default, neglect, or failure of the said party of the first part, his executors, administrators, or assigns, in payment of the said sum of money, with interest thereon as above mentioned, and in the next place to pay unto the said party of the first part, his executors or administrators,

all such surplus as may remain after such sale and after payment of all such sum or sums of money, and interest thereon, as may be due by virtue of these presents at the time of such seizure, and after the payment of the costs and charges and expenses incurred by such seizure and sale as aforesaid.

PROVIDED ALWAYS, nevertheless, that it shall not be incumbent on the said party of the second part, his executors, administrators, or assigns, to sell and dispose of the said goods and chattels, but that in case of default , it shall and may be lawful for the said party of the second part, his executors, administrators, or assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said goods and chattels, without the let, molestation, eviction, hindrance, or interruption of him, the said party of the first part, his executors or administrators, or any of them, or any other person or persons whomsoever.

AND the said party of the first part doth hereby further covenant, promise, and agree to and with the said party of the second part, his executors, administrators, and assigns, that in case the sum of money realized under any such sale as above mentioned shall not be sufficient to pay the whole amount due at the time of such sale, that he, the said party of the first part, his executors or administrators, shall and will forthwith pay or cause to be paid unto the said party of the second part, his executors, administrators, or assigns, all such sum and sums of money, with interest thereon, as may then be remaining due.

AND he, the said party of the first part, doth put the said party of the second part in full possession of

the said goods and chattels by delivering to him , in the name of all the said goods and chattels, at the sealing and delivery hereof.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of .

The Schedule within referred to, marked A.

County of , to wit: I, , make oath and say that the within mortgage truly sets forth the agreement entered into between myself and , therein named, and truly states the extent of the liability intended to be created by such agreement and covered by the within mortgage.

That the within mortgage is executed in good faith, and for the express purpose of securing me against the payment of the amount of my liability as . That the within mortgage is not executed for the purpose of securing the goods and chattels mentioned in the Schedule attached hereto, marked A, against the creditors of the said , or to prevent such creditors from recovering any claims which they may have against the said .

Sworn before me, at , this day of , A. D. 18 .

a Commissioner in B. R., &c.

County of , to wit: I, , of , make oath and say that I was personally present and

saw the annexed Chattel Mortgage duly signed, sealed, and delivered by , the parties thereto, and that the name , set and subscribed as a witness to the execution thereof, is my proper handwriting.

Sworn before me, at , }
this day of , A. D. 18 . }

a Commissioner in B. R., &c.

CHAPTER IX.

Of the Collection of Debts in the Division Courts.

In treating of the collection of debts, we shall confine ourselves to such as are within the jurisdiction of the division courts. The recovery of debts in the higher courts cannot be satisfactorily accomplished without the aid of professional men: we shall therefore only remark that debts exceeding one hundred dollars and not exceeding two hundred dollars, where the amount is unliquidated and not ascertained by the act or admission of the parties, and not exceeding four hundred dollars, where it is liquidated or so ascertained, must be sued for in the county court; and all debts of a higher amount must be sued for in the Queen's Bench or Common Pleas.

Division courts have been established in every county for the recovery of small debts. The number of such courts varies in different counties; but there must never be less than three nor more than twelve,

and there must be one court in every city and county town. These courts are presided over by the county judge; but in some large counties deputy judges are appointed, and then the courts are usually held by such deputy. The authority of these courts is now derived from the "act respecting the division courts," Cons. Stat. U. C. cap. 19. Courts are to be holden once in every two months, or oftener, in the discretion of the judge; and the judge may appoint, and from time to time alter, the times and places within such divisions when and at which such courts shall be holden.

The division courts have no jurisdiction in any of the following cases:—

1. Actions for any gambling debt; or

2. For spirituous or malt liquors drunk in a tavern or ale-house; or

3. On notes of hand given wholly or partly in consideration thereof;

4. Actions of ejectment, or actions in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom, or franchise, comes in question; or

5. In which the validity of any devise, bequest, or limitation under any will or settlement may be disputed; or

6. For malicious prosecution, libel, slander, criminal conversation, seduction, or breach of promise of marriage; or

7. Against a justice of the peace for any thing done by him in the execution of his office, if he objects thereto. (S. 54.)

The judge of every division court may hear and determine in a summary way,—

1. All personal actions where the debt or damages claimed do not exceed forty dollars; and

2. All claims and demands of debt, account, or breach of contract or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed one hundred dollars; and, except in cases in which a jury is legally demanded by a party, he shall be sole judge, and shall determine all questions of law and fact, and may make such orders, judgments, or decrees, as appear to him just and agreeable to equity and good conscience, and every order, judgment, and decree shall be final and conclusive between the parties. (S. 55.)

Upon any contract for the payment of a sum certain in labor, or in any kind of goods or commodities, or in any other manner than in money, the judge, after the day has passed on which the goods or commodities ought to have been delivered or the labor or other thing performed, may give judgment for the amount in money, as if the contract had been so originally expressed. (S. 56.)

No privilege shall be allowed to any person to exempt him from suing and being sued in a division court, and any executor or administrator may sue or be sued therein, and the judgment and execution shall be such as in like cases would be given or issued in the superior courts. (S. 57.)

A minor (that is, a person under twenty-one years of age) may sue in a division court for any sum, not

exceeding one hundred dollars, due to him for wages, in the same manner as if he were of full age. (S. 58.)

A cause of action shall not be divided into two or more suits for the purpose of bringing the same within the jurisdiction of a division court, and no greater sum than one hundred dollars shall be recovered in any action for the balance of an unsettled account, nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds two hundred dollars. (S. 59.)

A judgment of the court upon a suit brought for the balance of an account is a full discharge of all demands in respect of the account of which such suit was for the balance, and the entry of judgment shall be made accordingly. (S. 60.)

The mode of procedure in these courts is very simple.

The clerk issues all summonses properly filled up and without blanks, either in date or otherwise, at the time of delivery for service; he also furnishes copies of the same with the notice thereon, according to the form prescribed by rule of court. (S. 34.)

The plaintiff or defendant, respectively, must furnish the clerk with the particulars of the plaintiff's claim or demand or of the defendant's set-off (*as the case may be*), and the clerk will annex the plaintiff's particulars to the summons, and furnish copies thereof, or of the defendant's set-off, to the proper person to serve the same. (S. 35.)

Any suit may be entered and tried in the court holden for the division in which the cause of action arose (that is, where the debt was contracted), or in

which the defendant or any one of several defendants resides or carries on business at the time the action is brought, notwithstanding that the defendant or defendants may at such time reside in a county or division different from the one in which the cause of action arose. (S. 71.)

The places fixed for holding the sittings of the courts, and the offices of the clerks thereof, being in some instances situated at an inconvenient distance from the place of residence of certain parties residing in such divisions, while a court is held in an adjacent division, in the same, or in an adjoining county more convenient for such parties, and it being desirable that procedure in the division courts should be made easy and inexpensive to suitors, therefore, in case any person desires to bring an action in a division other than that in which the cause of action has arisen, or in which the defendant resides, any county judge may by special order authorize a suit to be entered and tried in the court of any division in his county adjacent to the division in which the defendant or one of several defendants resides, whether such defendant or defendants reside in the county of the judge granting the order, or in an adjoining county. (S. 72.)

The plaintiff must enter with the clerk a copy, and, if more than one defendant, copies, of his account, claim, or demand in writing in detail (and in cases of tort particulars of his demand), which shall be numbered according to the order in which the same are entered, and on the trial of the cause no evidence shall be given by the plaintiff of any cause of action,

except such as is contained in the account, claim, or demand so entered. (S. 74.)

The summons, with a copy of the account, or of the particulars of the claim or demand, attached, requires to be served ten days at least before the court day. (S. 75.)

In case none of the defendants reside in the county in which the action is brought, but one of them resides in an adjoining county, the summons must be served fifteen days, and in case none of the defendants reside in the county within which the action is brought, or in an adjoining county, then twenty days at least, before the court day. (S. 76.)

When the claim exceeds eight dollars, the service must be personal on the defendant; but where the amount does not exceed eight dollars, the service may be on the defendant, his wife or servant, or some grown person being an inmate of the defendant's dwelling-house or store. (S. 77.)

The bailiffs of the court serve and execute all summonses, orders, warrants, precepts, and writs, and so soon as served return the same to the clerk of the court of which they are bailiffs. (S. 79.)

The clerk prepares the affidavit of service of summons, stating how served, the day of service, and the distance the bailiff necessarily travelled to effect service, which is annexed to or indorsed on the summons; but the judge may require the bailiff to be sworn in his presence, and to answer such questions as may be put to him touching any service or mileage. (S. 80.)

In case of a debt or demand against two or more

persons, partners in trade, or otherwise jointly liable, but residing in different divisions, or one or more of whom cannot be found, one or more of such persons may be served with process, and judgment may be obtained and execution issued against the person or persons served, notwithstanding others jointly liable have not been served or sued, reserving always to the person or persons against whom execution issues, his or their right to demand contribution from any other person jointly liable with him. (S. 81.)

Whenever judgment has been obtained against any such partner, and the judge certifies that the demand proved was strictly a partnership transaction, the bailiff, in order to satisfy the judgment and costs and charges thereon, may seize and sell the property of the firm, as well as that of the defendants who have been served. (S. 82.)

On the day named in the summons, the defendant must in person, or by some person on his behalf, appear in the court to answer, and, on answer being made, the judge in a summary way tries the cause and gives judgment; and in case satisfactory proof is not given to the judge entitling either party to judgment, he may nonsuit the plaintiff; and the plaintiff may, before verdict in jury cases, and before judgment pronounced in other cases, insist on being nonsuited. (S. 84.)

When a plaintiff takes a nonsuit, he is at liberty to bring his case again into court on a new summons, but if a judgment against him be given, he cannot. If on the day named in the summons the defendant does not appear, or sufficiently excuse his absence, or

if he neglects to answer, the judge, on proof of due service of the summons and copy of the plaintiff's claim, may proceed to the trial of the cause on the part of the plaintiff only, and the order, verdict, or judgment thereupon shall be final and absolute, and as valid as if both parties had attended. (S. 85.)

The judge may adjourn the hearing of any cause in order to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable such party to enter more fully into his case or defence, or for any other cause which the judge thinks reasonable, upon such conditions as to the payment of costs and admission of evidence or other equitable terms as to him seems meet. (S. 86.)

If the defendant desires to plead a tender, before action brought, of a sum of money in full satisfaction of the plaintiff's claim, he may do so on filing his plea with the clerk of the court before which he is summoned to appear, at least six days before the day appointed for the trial of the cause, and at the same time paying into court the amount of the money mentioned in such plea. (S. 87.)

Such sum is to be paid to the plaintiff, less one dollar, to be paid over to the defendant for his trouble, in case the plaintiff do not further prosecute his suit, and all proceedings in the action are to be stayed, unless the plaintiff, within three days after the receipt of notice of such payment, signify to the clerk of the said court his intention to proceed for his demand, notwithstanding such plea; and in such case the action shall proceed accordingly. (S. 88.)

If the decision thereon be for the defendant, the plaintiff pays the defendant his costs, to be awarded by the court, and the amount thereof may be paid over to him out of the money so paid in with the said plea, or may be recovered from the plaintiff in the same manner as any other money payable by a judgment of the court; but, if the decision be in favor of the plaintiff, the full amount of the money paid into court will be applied to the satisfaction of his claim, and a judgment may be pronounced against the defendant for the balance due and the costs of suit. (S. 89.)

The defendant may, at any time not less than six days before the day appointed for the trial, pay into court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment. (S. 90.)

The sum so paid is to be paid to the plaintiff, and all proceedings in the action stayed, unless within three days after the receipt of the notice the plaintiff signify to the clerk his intention to proceed for the remainder of the demand claimed, in which case the action shall proceed as if brought originally for such remainder only. (S. 91.)

If the plaintiff recovers no further sum in the action than the sum paid into court, the plaintiff pays the defendant all costs incurred by him in the action after such payment, and such costs may be duly taxed, and recovered by the defendant by the same means as any other sum ordered to be paid by the court. (S. 92.)

When a defendant desires to put in an offset, or to

take advantage of the claim being outlawed, he must at least six days before the trial give notice thereof in writing to the plaintiff, or leave the same for him at his usual place of abode if within the division, or, if living without the division, deliver the same to the clerk of the court in which the action is to be tried, and in case of a set-off the particulars thereof must accompany the notice. (S. 93.)

No evidence of set-off can be given by the defendant, except such as contained in the particulars of set-off delivered. (S. 94.)

If the defendant's demand, as proved, exceeds the plaintiff's, the court may nonsuit the plaintiff; or if the defendant's set-off, after remitting any portion of it he pleases, does not exceed twenty-five pounds, the court may give judgment for the defendant for the balance found in his favor. (S. 95.)

And where a set-off is set up, the judgment of the court thereon will be a full discharge, as well of the amount allowed to be set off as the amount by which such claim of the defendant exceeded one hundred dollars, and the judgment will be entered accordingly. (S. 96.)

Any of the parties to a suit may obtain from the clerk a subpœna with or without a clause for the production of books, papers, and writings, requiring any witness resident within the county, or served with the subpœna therein, to attend court; and the clerk, when requested, shall give copies of such subpœna. (S. 97.)

Any number of names may be inserted in the subpœna, and service thereof may be made by any per-

son who can read and write, and proof of the due service thereof, together with the tender or payment of expenses, may be made by affidavit sworn before any county judge or the clerk of any division court, or before any person authorized to take affidavits in any of the superior courts, and proof of service may be received by the several judges of the said courts, either orally or by affidavit. (S. 98.)

Every person served with a copy of a subpœna, either personally or at his usual place of abode, and to whom at the same time a tender of payment of his lawful expenses is made, who refuses or neglects without sufficient cause to obey the subpœna, and also every person in court called upon to give evidence, who refuses to be sworn (or affirm where affirmation is by law allowed) or to give evidence, shall pay such fine, not exceeding eight dollars, as the judge may impose, and shall, by verbal or written order of the judge, be, in addition, liable to imprisonment for any time not exceeding ten days; and such fine shall be levied and collected with costs in the same manner as fines imposed on jurymen for non-attendance, and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fee fund. (S. 99.)

Any party may obtain, from either of the superior courts of common law, a subpœna requiring the attendance at the division court, and at the time mentioned in such subpœna, of a witness residing or served with such subpœna in any part of Upper

Canada; and the witness shall obey such subpœna, provided the allowance for his expenses, according to the scale settled in the superior courts, be tendered to him at the time of service. (S. 100.)

Neither plaintiff nor defendant can give evidence on their own behalf; but either may be examined at the instance of the opposite party or of the judge. (S. 101.)

The judge may, whenever he thinks it conducive to the ends of justice, require the plaintiff or defendant to be examined. (S. 102.)

In any suit for a debt not exceeding five pounds, the judge, on being satisfied of their general correctness, may receive the plaintiff's books as testimony, or in case of a defence of set-off or of payment, so far as the same extends to five pounds, may receive the defendant's books, and may also receive as testimony the affidavit of any party or witness in the suit resident without the limits of his county. (S. 103.)

All affidavits to be used in any division court may be sworn before the judge, clerk, or deputy clerk, or before any judge, or commissioner for taking affidavits in any of the superior courts. (S. 104.)

The judge shall, openly in court, and as soon as may be after the hearing, pronounce his decision; but if he is not prepared to pronounce a decision instanter, he may postpone judgment and name a subsequent day and hour for the delivery thereof in writing at the clerk's office; and the clerk shall then read the decision to the parties or their agents, if present, and forthwith enter the judgment. (S. 106.)

The judge may order the times and the proportions

in which any sum and costs recovered by judgment of the court shall be paid, reference being had to the day on which the summons was served, and, at the request of the party entitled thereto, he may order the same to be paid into court, and the judge, upon the application of either party, within fourteen days after the trial, and upon good grounds being shown, may grant a new trial upon such terms as he thinks reasonable, and in the mean time may stay proceedings. (S. 107.)

Except in cases where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from service of the summons without the consent of the party entitled to the same, but in case it at any time appears to the satisfaction of the judge, by affidavit or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, ordered to be paid as aforesaid, the judge may stay judgment or execution for such time and on such terms as he thinks fit. (S. 108.)

The judge may, in any case, with the consent of both parties to the suit, or of their agents, order the same, with or without other matters in dispute between such parties, being within the jurisdiction of the court, to be referred to arbitration to such person or persons, and in such manner and on such terms, as he thinks reasonable and just. (S. 109.)

Such reference shall only be revocable, by either party, with the consent of the judge. (S. 110.)

The award of the arbitrator shall be entered as the

judgment in the cause, and shall be as binding and effectual as if given by the judge. (S. 111.)

The judge, on application to him within fourteen days after the entry of such award, may, if he thinks fit, set aside the award, or may, with the consent of both parties, revoke the reference and order another reference to be made in the manner aforesaid. (S. 112.)

Any of such arbitrators may administer an oath or affirmation to the parties, and to all other persons examined before such arbitrator. (S. 113.)

The costs of any action or proceeding not otherwise provided for shall be paid by or apportioned between the parties in such manner as the judge thinks fit, and in cases where the plaintiff does not appear in person or by some person on his behalf, or appearing does not make proof of his demand to the satisfaction of the judge, he may award to the defendant such costs and such further sum of money, by way of satisfaction for his trouble and attendance, as he thinks proper, to be recovered as provided for in other cases under this act; and in default of any special direction, the costs shall abide the event of the action, and execution may issue for the recovery thereof in like manner as for any debt adjudged in the court. (S. 114.)

Any bailiff or clerk, before or after suit commenced, may take a confession or acknowledgment of debt from any debtor or defendant desirous of executing the same, and upon the production of such confession or acknowledgment to the judge, and its

being proved by the oath of such bailiff or clerk, judgment may be entered thereon. (S. 117.)

Either party may require a jury, in actions for damages where the amount sought to be recovered exceeds ten dollars, and in all other actions where such amount exceeds twenty dollars. (S. 119.)

In case the plaintiff requires a jury to be summoned to try the action, he must give notice thereof in writing to the clerk at the time of entering his claim, and at the same time pay to the clerk the proper fees for the expenses of such jury; and in case the defendant requires a jury, he must, within five days after the day of service of the summons on him, give to the clerk, or leave at his office, the like notice in writing, and at the same time pay the proper fees as aforesaid; and thereupon, in either of such cases, a jury shall be summoned. (S. 120.)

Either of the parties to a cause is entitled to challenge three jurors. (S. 125.)

Five jurors shall be empanelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict, according to the evidence; and the verdict of every jury shall be unanimous. (S. 131.)

The judge may, if he think proper, have any disputed fact in a cause tried by a jury; and in any case, if the judge is satisfied that a jury cannot agree, he may discharge them and adjourn the cause to the next court: unless the parties consent to his pronouncing a judgment. (Ss. 132, 133.)

If there be cross-judgments between the parties, the

party only who has obtained judgment for the larger sum shall have execution, and then only for the balance over the smaller judgment; and if both sums are equal, satisfaction shall be entered upon both judgments. (S. 134.)

In case the judge makes an order for the payment of money, and in case of default of payment of the whole or of any part thereof, the party in whose favor such order has been made may sue out execution against the goods and chattels of the party in default. (S. 135.)

In case any person against whom a judgment has been entered up removes to another county without satisfying the judgment, the county judge of the county to which such party has removed may, upon the production of a copy of the judgment duly certified by the judge of the county in which the judgment has been entered, order an execution for the debt and costs awarded by the judgment to issue against such party. (S. 137.)

If the party against whom an execution has been awarded pays or tenders to the clerk or bailiff of the division court out of which the execution issued, before an actual sale of his goods and chattels, the debt and costs, or such part thereof as the plaintiff agrees to accept in full of his debt, together with the fees to be levied, the execution shall thereupon be superseded, and the goods be released and restored to such party. (S. 138.)

The clerk, upon the application of any plaintiff or defendant (or his agent) having an unsatisfied judgment in his favor, shall prepare a transcript of the

entry of such judgment, and send the same to the clerk of any other division court in any other county, with a certificate at the foot thereof signed by the clerk who gives the same, and sealed with the seal of the court of which he is clerk, and addressed to the clerk of the court to whom it is intended to be delivered, and stating the amount unpaid upon such judgment and the date at which the same was recovered; and the clerk to whom such certificate is addressed shall, on the receipt of such transcript and certificate, enter the transcript in a book to be kept in his office for the purpose, and the amount due on the judgment according to the certificate; and all proceedings may be taken for the enforcing and collecting the judgment in such last-mentioned division court by the officers thereof that could be had or taken for the like purpose upon judgments recovered in any division court. (S. 139.)

In case of the death of either or both of the parties to a judgment in any division court, the party in whose favor the judgment has been entered, or his personal representative in case of his death, may revive such judgment against the other party, or his personal representative in case of his death, and may issue execution thereon in conformity with any rules which apply to such division court in that behalf. (S. 140.)

In case an execution be returned *nulla bona*, and the sum remaining unsatisfied on the judgment amounts to the sum of forty dollars, the plaintiff or defendant may obtain a transcript of the judgment from the clerk, under his hand and sealed with the seal of the court. (S. 142.)

Upon filing such transcript in the office of the clerk of the county court in the county where such judgment has been obtained, or in the county wherein the defendant's or plaintiff's lands are situate, the same shall become a judgment of such county court, and the clerk of such county court shall file the same and make the proper entries in his book on payment of fifty cents. (S. 143.)

Upon such filing and entry, the plaintiff or defendant may, until the judgment has been fully paid and satisfied, pursue the same remedy for the recovery thereof or of the balance due thereon as if the judgment had been originally obtained in the county court. (S. 145.)

In case any bailiff employed to levy an execution against goods and chattels, by neglect, connivance, or omission, loses the opportunity of so doing, then upon complaint of the party aggrieved, and upon proof by the oath of a credible witness of the fact alleged to the satisfaction of the court, the judge shall order the bailiff to pay such damages as it appears the plaintiff has sustained, not exceeding the sum for which the execution issued, and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal to satisfy the same, payment shall be enforced by such means as are provided for enforcing judgments recovered in the court. (S. 147.)

Goods taken in execution may not be sold until the expiration of eight days at least next after the seizure thereof, unless upon the request in writing under the hand of the party whose goods have been seized. (S. 156.)

In case the judge be satisfied upon application on

oath made to him by the party in whose favor a judgment has been given, or be satisfied by other testimony, that such party will be in danger of losing the amount of the judgment, if compelled to wait till the day appointed for the payment thereof before any execution can issue, such judge may order an execution to issue at such time as he thinks fit. (S. 158.)

Any party having an unsatisfied judgment may procure from the court wherein the judgment has been obtained, or from any division court within the limits of which the defendant dwells or carries on his business, a judgment summons; and if the defendant appears in pursuance thereof, he may be examined upon oath touching his estate and effects and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectation he then had and as to the property and means he still has of discharging the said debt, damages, or liability, and as to the disposal he has made of any property. (S. 160.)

If the party so summoned (1) does not attend as required by the summons or allege a sufficient reason for not attending; or (2) if he attends and refuses to be sworn or to declare any of the things aforesaid; or (3) if he does not make answer touching the same to the satisfaction of the judge; or (4) if it appears to the judge, either by the examination of the party or by other evidence, that the party obtained credit from the plaintiff or incurred the debt or liability under false pretences, or by means of fraud or breach of trust, or that he wilfully contracted the debt or lia-

bility without having had at the time a reasonable expectation of being able to pay or discharge the same, or has made or caused to be made any gift, delivery, or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them; or (5) if it appears to the satisfaction of the judge that the party had when summoned, or since the judgment was obtained against him has had, sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by the instalments which the court in which the judgment was obtained has ordered, and if he has refused or neglected to pay the same at the time ordered, whether before or after the return of the summons, the judge may, if he thinks fit, order such party to be committed to the common gaol of the county in which the party so summoned is resident, for any period not exceeding forty days. (S. 163.)

The judge before whom such summons is heard may rescind or alter any order for payment previously made against any defendant so summoned before him, and may make any further or other order, either for the payment of the whole of the debt or damages recovered and costs forthwith, or by any instalments, or in any other manner that he thinks reasonable and just. (S. 167.)

In case the defendant has been personally served with the summons to appear, or personally appears at the trial, and judgment be given against him, the judge at the trial may examine the defendant and the plaintiff, and any other person, touching the several things before mentioned, and may commit the de-

fendant to prison, and make an order in like manner as in case the plaintiff had obtained a judgment summons. (S. 168.)

No imprisonment under the act shall extinguish the debt, or protect the defendant from being summoned anew and imprisoned for any new fraud or other default, or deprive the plaintiff of any right to take out execution. (S. 170.)

We have stated in the foregoing pages the substance of the enactments of the Division Court Act, so far as they apply to proceedings for the collection of an ordinary debt. We now proceed to notice the mode of action where the debtor has absconded or attempts to abscond.

In case any person being indebted in a sum not exceeding one hundred dollars, nor less than four dollars, for any debt or damages, or upon any judgment, (1) absconds from this province, leaving personal property liable to seizure under execution for debt in any county in Upper Canada, or (2) attempts to remove such personal property either out of Upper Canada or from one county to another therein, or (3) keeps concealed in any county of Upper Canada to avoid service of process, and in case any creditor of such person, his servant or agent, makes and produces an affidavit or affirmation in the form given at the end of this chapter, and in case the said affidavit or affirmation be filed with such clerk, then such clerk shall issue a warrant, directed to the bailiff or to any constable of the county, commanding such bailiff or constable to attach, seize, take, and safely keep all the personal estate and effects of the absconding, remov-

ing, or concealed person within such county liable to seizure under execution for debt, or a sufficient portion thereof, to secure the sum mentioned in the warrant with the costs of the action, and to return the warrant forthwith to the court out of which the same issued. (S. 197.)

The judge, or a justice of the peace for the county, may take the affidavit and issue the warrant under his hand and seal. (S. 198.)

In case any person against whom an attachment has issued, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out the attachment, and files in court, a bond with good sureties, to be approved of by the judge or clerk, in double the amount claimed, that the debtor will, in the event of the claim being proved and judgment recovered, pay the same, or the value of the property taken, to the claimant, or produce such property whenever required, the clerk may supersede the attachment, and the property attached shall be restored. (S. 207.)

If within one month from the seizure the party against whom the attachment issued does not appear and give such bond, execution may issue as soon as judgment has been obtained, and the property seized upon the attachment, or enough thereof to satisfy the judgment and costs, may be sold for the satisfaction thereof; or if the property has been previously sold as perishable, enough of the proceeds thereof may be applied to satisfy the judgment and costs. (S. 208.)

In case any horses, cattle, sheep, or other perishable goods have been taken upon an attachment, the

clerk of the court may, at the request of the plaintiff, sell the same at public auction to the highest bidder. (S. 211.)

The rules framed under the provisions of the act are almost as lengthy as the act itself: it will, however, only be necessary to refer to a few, the substance of which may be stated as follows:—

Every account or claim must show the names of parties in full, and their residences, and must be written in a legible manner. If the plaintiff is unacquainted with the defendant's Christian name, he may be designated by the surname alone, or by initials (R. 14); and every account must show the particulars in detail. (R. 15.)

If a defendant desires to inspect any deed or document in plaintiff's hands, he may give four days' notice of his desire, by letter or otherwise, and the plaintiff must appoint a place within the division where defendant may see the document. If he neglects or refuses to appoint a place, or allow inspection, within three days, the judge may adjourn the case, and make any order he may think fit as to costs. (R. 26.)

If a plaintiff or defendant, with a view to save expense, gives notice to the opposite party that he will admit on the trial any part of the claim or set-off, or any facts which would otherwise require proof, no costs of such proof shall be afterwards allowed. The notice must be served six days before trial. (R. 30.)

Every affidavit must be entitled in the cause, stating Christian and surname of parties, and of the person making the affidavit, and his place of abode and

addition; and if any affidavit be sworn by an illiterate person, the jurat must contain a certificate of the clerk or other person administering the oath, that it was read over to, and apparently understood by, the party making it; and there must be no erasure or interlineation in the jurat. (R. 46.)

Where an excess is abandoned, it must be done in the first instance on the claim or set-off. (R. 69.)

FORMS.

1. AFFIDAVIT FOR LEAVE TO SUE A PARTY RESIDING IN AN ADJOINING DIVISION.

In the Division Court for the County of ,

I, A. B., of, &c., yeoman, make oath and say:

1. That I have a cause of action against C. D., of , yeoman, who resides in the Division of the County of .

2. That I reside in the Division of the County of .

3. That the distance from my residence to the place where this court is held is about miles, and to the place where the court is held in the Division of the County of is about miles.

4. That the distance from the said C. D.'s residence to the place where the court is held, in the Division where he resides, is about miles, and to the place where this court is held, about miles.

5. That the said Division and this Division adjoin each other, and that it will be more easy and inex-

pensive for the parties to have this cause tried in this Division than elsewhere. A. B.

Sworn before me, at , in the County of , this day of , A. D. 18 .

E. F.,

Clerk, or, *Commissioner, &c., in B. R., for County* .

2. PARTICULARS OF CLAIM.

A. B., of, &c., claims of C. D., of, &c., the sum of dollars, the amount of the following account:

1863. Jan. 1. To 100 lbs. flour $2 00
" May 2. To 3 barrels apples 9 00
To interest from to . . .

$

A. B.

3. NOTICE OF SET-OFF.

In the Division Court of the County of .
BETWEEN A. B. plaintiff,
and
C. D., defendant.

Take notice that the defendant will set off the following claim on the trial, viz.:

1863. Feb. 9. To one box stove $4 00
" Apl. 3. To &c. &c. . . . . .

$

Dated this day of , 18 .

C. D.

To A. B., the plaintiff.

OTICE OF DEFENCE UNDER STATUTE.

In the Division Court for the County of .
BETWEEN A. B. plaintiff,
and
C. D., defendant.

The plaintiff is required to take notice, that, upon the hearing of this cause, the defendant intends to give in evidence and insist upon the following ground of defence, namely, that the claim for which he, the defendant, has been summoned, has been barred by the statute of limitations [*or, as the case may be*].

Dated this day of , 18 .

C. D.

To A. B., plaintiff.

N. B.—*This notice may be embodied with notice of set-off.*

5. NOTICE OF ADMISSION TO SAVE UNNECESSARY EXPENSE OF PROOF.

In the, &c.,
BETWEEN, &c.,

The plaintiff is required to take notice that the defendant will admit, on the trial of this cause, the first, second, and third items of the plaintiff's particulars to be correct.

Dated the day of , 18 .

C. D.

6. AFFIDAVIT FOR ATTACHMENT.

[*If made after suit commenced, insert style of court and cause.*]

I, A. B., of, &c., yeoman, make oath and say:

1. That C. D., of [*or* late of] , in the county

of , is justly and truly indebted to me in the sum of dollars, for goods sold and delivered by me to the said C. D. at his request [*or other cause of action stating the same in ordinary and concise language*].

2. I have good reason to believe, and verily do believe, that the said C. D. hath absconded from this province, leaving personal property liable to seizure under execution for debt in the county of [*or* hath attempted to remove his personal property liable to seizure under execution for debt out of Upper Canada (*or* from the county of to another county in Upper Canada) (*or* from Upper to Lower Canada), with intent and design to defraud me of my said debt (*or*, *as the case may be*)].

3. This affidavit is not made, nor the process thereon to be issued, from any vexatious or malicious motive whatever.

A. B.

Sworn before me, at , in the county of , this day of , 18 .

E. F.,

Clerk, &c., or Judge, or Justice of the Peace (as the case may be).

7. WARRANT OF ATTACHMENT.

County of
(*here insert the county.*)

To A. B., bailiff of the Division Court of the said county of [*or* to A. B., a constable of the county of , *as the case may be*].

You are hereby commanded to attach, seize, take,

and safely keep all the personal estate and effects of C. D. [*naming the debtor*], an absconding, removing, or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt within the county of [*here name the county*], or a sufficient portion thereof to secure A. B. [*here name the creditor*] for the sum of [*here state the amount sworn to be due*], together with the costs of his suit thereupon, and to return this warrant, with what you shall have taken thereupon, to the clerk of the [*here state the number of the division*] division court of the county aforesaid, forthwith: and herein fail not.

WITNESS my hand and seal, the day of , one thousand eight hundred and .

E. F. [L. S.]

Judge, Clerk, or Justice of the Peace (as the case may be).

Tariff of Division Court Fees.

FEE FUND.	Not exceeding $8.	Exceeding $8, and not exceeding $20.	Exceeding $20, and not exceeding $40.	Exceeding $40, and not exceeding $60.	Exceeding $60.
	$ c.	$ c.	$ c.	$ c.	$ c.
Entering account and issuing summons	0 07	0 10	0 25	0 40	0 60
Hearing an undefended cause	0 10	0 15	0 25	0 60	0 60
Hearing a defended cause. To be increased by the judge, if he sees fit, to a sum not exceeding two dollars, whatever be the amount of the debt, damages, or subject-matter of action	0 20	0 40	0 75	1 00	1 50
Every order or judgment (not to be charged when the defendant has given a confession of judgment)	0 05	0 10	0 15	0 25	0 40
On every confession of judgment	0 05	0 05	0 05	0 10	0 10

***Tariff of Division Court Fees.*—(*Continued.*)**

Clerk's Fees.	Not exceeding $20.	Exceeding $20, and not exceeding $60.	Exceeding $60.
	$ c.	$ c.	$ c.
Entering every account and issuing summons..	0 20	0 30	0 40
Copy of summons, particulars of demand or set-off, each	0 10	0 15	0 20
Every summons to witnesses with any number of names	0 10	0 10	0 10
Preparing affidavit, and administering oath to bailiff of service of summons	0 15	0 15	0 15
Entering bailiff's returns to summons to defendant	0 05	0 05	0 05
Every copy of subpœna when made by the clerk	0 05	0 05	0 05
Entering set-off or other defence requiring notice to plaintiff	0 15	0 20	0 20
Adjournment of any cause	0 20	0 20	0 20
Entering every judgment or order made at hearing	0 15	0 20	0 25
Taking confession of judgment	0 15	0 15	0 15
Every warrant, attachment, or execution	0 25	0 30	0 40
Every copy of judgment to another county	0 25	0 25	0 25
Transcript or certificate of judgment for registration in the county registry office	0 25	0 25	0 25
Entering and giving notice of jury being required	0 20	0 25	0 30
Making out summons to jury, for each juryman	0 10	0 10	0 10
For every affidavit taken, and drawing the same	0 20	0 20	0 20
Returns to treasurer, to be paid out of the fee fund, including attendance on the judge to audit the same, each, and to be retained from the fee fund in his hands	4 00	4 00	4 00
Every search on behalf of a person not a party to a suit, to be paid by the applicant	0 10	0 10	0 10
Every search for a party to a suit when the proceedings are over a year old	0 10	0 10	0 10
Transmitting papers for service to another county or division, in addition to the necessary postage on transmission and return	0 20	0 20	0 20
Receiving papers from another county or division for service, entering same in a book, handing the same to the bailiff, and receiving his return, to be paid when the claim is filed or defence entered	0 20	0 20	0 20
For returning a judge's jury	0 25	0 25	0 25

Tariff of Division Court Fees.—(*Continued.*)

THE BAILIFF'S FEES.	Not exceeding $8.	Exceeding $8, and not exceeding $20.	Exceeding $20, and not exceeding $40.	Exceeding $40, and not exceeding $60.	Exceeding $60.
	$ c.	$ c.	$ c.	$ c.	$ c.
Service of summons, or other proceeding, except subpœna, on each person..	0 07	0 10	0 15	0 15	0 20
Service of subpœna on each witness	0 07	0 07	0 07	0 07	0 07
For taking confession of judgment	0 07	0 10	0 10	0 15	0 20
Drawing and attending to swear to every affidavit of service of summons, when served out of the division.....	0 20	0 20	0 20	0 20	0 20
Enforcing every warrant, execution, or attachment, against the goods or body	0 30	0 30	0 40	0 60	0 75
For every mile necessarily travelled from the clerk's office, to serve summons or subpœna, and in going to seize on execution or attachment, where money made or case settled after the levy....	0 08	0 08	0 08	0 08	0 08
For every jury trial.....	.....	0 10	0 15	0 20	0 30
For carrying delinquent to prison, including all expenses and assistance, per mile, twenty cents.					
Every schedule of property seized, return, including affidavit of appraisal..	.....	0 50	0 50	0 50	1 00
Every bond, including affidavit of justification	.....	0 50	0 50	0 50	.....
Every notice of sale not exceeding three, under execution, on attachment, ten cents each.					
That there be allowed to the bailiff upon the sale of property under any execution the sum of two and a half per cent. upon the amount realized, and not to apply to any overplus on the said execution.					
JURORS' FEES.					
Each juror sworn in any cause, out of the money deposited with the clerk for jurors' fees	.....	0 10	0 10	0 10	0 17
FEES OF APPRAISERS OF GOODS, &C., SEIZED UNDER WARRANT OF ATTACHMENT.					
To each appraiser, fifty cents per day during the time actually employed in appraising goods, to be paid in first instance by the plaintiff, and allowed in costs of the cause, fifty cents.					

CHAPTER X.

Of Deeds.

A DEED is a writing by which lands, tenements, or hereditaments are conveyed, sealed, and delivered by the parties. It must be written or printed on paper or parchment. As a general rule, it is better not to use figures in a deed; and every word should be written in full. The names, residences, and additions of all the parties to the deed should be carefully inserted. The description of the premises conveyed should be very accurate. If a whole lot be conveyed, it may be sufficient simply to describe it as lot No. 1 (as the case may be), such a concession and township, containing so many acres. If a part only is to be conveyed, the particular part intended should be specified,—whether north or south half, or northeast quarter, and so on. When it can be conveniently done, it is always better to describe a lot by metes and bounds, particularly where it is part of a larger lot. If there are any alterations, interlineations, or erasures in a deed, made before signing, they should be mentioned in the attestation, and the witness should put his initials opposite each alteration, &c. After a deed has been signed, the parties have no right to make the slightest alteration. An interlineation of a deed after execution sometimes vitiates the deed.

The maker of a deed is called the grantor; the party to whom it is delivered, the grantee. If the grantor of freehold land have a wife, she must join in the deed with her husband, in order to bar her dower; or else after the death of the husband she may claim her dower, or the use of one-third during her life.

When a married woman desires to convey any freehold property to which she is entitled in her own right, she must acknowledge the deed before a judge of any of the superior courts, or before the judge of a county court, or before two justices of the peace. The judge or justices before whom the acknowledgment is taken must sign a certificate of the acknowledgment in the form prescribed by the "act respecting the conveyance of real estate by married women," cap. 85, Cons. Stat. U. C.

The formal mode of executing a deed is as follows. The grantor, or party conveying, signs his name, in the usual way in which he writes it, opposite the seal, and then, placing a finger upon the seal, says, "I deliver this as my act and deed." The grantee, or any other party signing the deed, will do so in like manner.

When a deed is to be executed by a marksman, that is, a person who cannot write his name, it is done as follows. Some person—it matters not whom—writes opposite the seal

A. B., his mark (thus: A. B. + his mark.) [L. S.];

And then the person who is to make the mark takes a pen, and with it makes a cross in the way

above shown. Before making his mark, however, the deed should be read over and explained to him, so that there may be no doubt about his knowing perfectly well what he is doing.

The law of real property is much too intricate to be treated of in this place; nor shall we attempt a popular definition of a "good title," or enter into the question of title at all. If any purchaser of property desires to be satisfied that he is getting a good title to that for which he is paying, he must have recourse to the professional man. We may remark, however, that registry offices have been established in every county in Canada, and that, in order to be safe, every deed of land ought to be recorded. The fee for recording a deed is one dollar and twenty-five cents, but, if the memorial is over a certain length, an extra charge may be made. A search may be made in any registry office to see how a title stands, or what deeds are recorded against a lot. The fee for search is twenty-five cents for every four deeds or entries in the books, looked at.

Memorials are executed in the same way as deeds, except that it is not necessary to put the finger on the seal and say, "I deliver this as my act and deed." Every memorial must be witnessed by *two* witnesses, one of whom must be the witness to the deed, and this witness (the witness to both deed and memorial) must make the affidavit. The affidavit may be sworn to before the registrar, or deputy registrar, or before a judge of the superior courts or of a county court, or before a commissioner. When a deed and memorial has been executed *out* of

Upper Canada, the affidavit may be sworn before any of the persons aforesaid, or before the mayor or chief magistrate of any city, town, or place in Great Britain, certified under the corporate seal; or before a judge of the superior or circuit courts in Lower Canada, or before a judge of the supreme court of any colony belonging to Great Britain, or before the mayor of any place in a foreign country, or any British consul or vice-consul. In all cases, however, where the affidavit is made out of Upper Canada, the deed to be recorded must be identified by a certificate indorsed on the deed, under the hand of the person before whom the affidavit is made. The certificate may be in the following form:—

"This is the deed referred to in the affidavit of A. B. annexed to the memorial of this deed, sworn before me, this day of , 186 .

"E. F., Judge, *or* Mayor, &c. &c."

A corporation executes a deed by affixing to it its common seal, and signing by its head officer as mayor, or president, &c. A memorial is executed in the same way. No affidavit is necessary to prove the execution of a memorial by a corporation; the corporate seal alone is sufficient evidence.

The ordinary mode by which real property is conveyed in Upper Canada is by deed called bargain and sale.

A receipt for the purchase money should be indorsed on every deed.

Deed of Bargain and Sale.

ABSOLUTE COVENANTS.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part; WITNESSETH, that the said part of the first part, for and in consideration of the sum of , of lawful money of Canada, to , by the said part of the third part, in hand well and truly paid, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), ha granted, bargained, sold, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, release, convey, and confirm, unto the said part of the third part, heirs and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the , TOGETHER with all and singular the houses, out-houses, edifices, barns, stables, yards, gardens, orchards, trees, woods, underwoods, fences, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances, whatsoever, to the said parcel or tract of land and premises belonging, or in any wise appertaining, or therewith demised, held, used, occupied and enjoyed, or taken or known as part or parcel thereof; and also the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part and

parcel thereof; and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of , the said part of the first part, in, to, out of, or upon the said lands and premises, and every part and parcel thereof, with their and every of their appurtenances: TO HAVE AND TO HOLD the same lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said part of the third part, heirs and assigns, to the sole and only use of the said part of the third part, heirs and assigns, forever. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the crown.

AND THIS INDENTURE FURTHER WITNESSETH, that the said party of the second part, with the privity and full approbation and consent of her said husband, testified by his being a party to these presents, in consideration of the premises, and also in consideration of the further sum of five shillings of lawful money of the Province of Canada aforesaid, to her by the said part of the third part in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath granted and released, and by these presents doth grant and release, unto the said part of the third part, heirs and assigns, all DOWER, and all right and title thereto, which she, the said party of the second part, now hath or in the event of surviving her said husband

might or would have in, to, or out of the lands and premises hereby conveyed or intended so to be.

And the said part of the first part do hereby, for , heirs, executors, and administrators, covenant, promise, and agree with and to the said part of the third part, heirs and assigns, in manner following, that is to say: That , the said part of the first part, now ha in good right full power and absolute authority to convey the said lands and other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said part of the third part, in manner aforesaid and according to the true intent and meaning of these presents: And that it shall be lawful for the said part of the third part, heirs and assigns, from time to time and at all times hereafter peaceably and quietly to enter upon, have, hold, occupy, possess, and enjoy the said lands and premises hereby conveyed or intended so to be, with their and every of their appurtenances, and to have, receive, and take the rents, issues, and profits thereof and of every part thereof to and for and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever of, from, or by , the said part of the first part, or heirs, or any other person or persons whomsoever: And that free and clear, and freely and absolutely acquitted, exonerated, and forever discharged or otherwise by the said part of the first part or heirs well and sufficiently saved, kept harmless, and indemnified of, from, and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail,

will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble, and incumbrance whatsoever: AND LASTLY, that , the said part of the first part, heirs, executors, or administrators, and all and every other person whomsoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest whatsoever, either at law or in equity, in, to, or out of the said lands and premises hereby conveyed or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for , them, or any of them, shall and will from time to time and at all times hereafter, upon every reasonable request, and at the costs and charges of the said part of the third part, heirs or assigns, make, do, or execute, or cause to be made, done, or executed, all such further and other lawful acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the said part of the third part, heirs and assigns, in manner aforesaid, as by the said part of the third part, heirs and assigns, or their counsel in the law, shall be reasonably devised, advised, or required; so as no person who shall be required to make or execute such assurances shall be compellable, for the making or executing thereof, to go or travel from his usual place of abode.

IN WITNESS WHEREOF, the said parties to these pre-

sents have hereunto set their hands and affixed their seals, the day and year first above written.

A. B. [L. S.]
C. D. [L. S.]

Signed, sealed, and delivered in the presence of } E. F.

RECEIVED, on the day of the within Indenture, the sum of , of lawful money of Canada, being the full consideration therein mentioned.

A. B.

Signed in the presence of
E. F.,

Deed of Bargain and Sale.

QUALIFIED COVENANTS.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part: WITNESSETH, that the said party of the first part, for and in consideration of the sum of , of lawful money of Canada, to him by the said part of the third part in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath granted, bargained, sold, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, release, convey, and confirm, unto the said part of the third part, heirs and assigns, ALL and singular th certain

parcel or tract of land and premises situate, lying, and being in the , TOGETHER with all and singular the houses, out-houses, edifices, barns, stables, yards, gardens, orchards, trees, woods, underwoods, fences, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever, to the said parcel or tract of land and premises belonging or in any wise appertaining, or therewith demised, held, used, occupied, and enjoyed, or taken or known as part or parcel thereof, and also the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part and parcel thereof; and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of him, the said party of the first part, in, to, out of, or upon the said lands and premises and every part and parcel thereof, with their and every of their appurtenances: TO HAVE AND TO HOLD the same lands, tenements, and hereditaments, and all and singular other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said part of the third part, heirs and assigns, to the sole and only use of the said part of the third part, heirs and assigns, forever. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown.

AND THIS INDENTURE FURTHER WITNESSETH, that the said party of the second part, with the privity and full approbation and consent of her said husband, tes-

tified by his being a party to these presents, in consideration of the premises, and also in consideration of the further sum of five shillings of lawful money of the Province of Canada aforesaid to her by the said part of the third part in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath granted and released, and by these presents doth grant and release, unto the said part of the third part, heirs and assigns, all DOWER, and all right and title thereto, which she, the said party of the second part, now hath or in the event of surviving her said husband might or would have in, to, or out of the lands and premises hereby conveyed or intended so to be.

AND THE SAID PARTY OF THE FIRST PART doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said part of the third part, heirs and assigns, in manner following, that is to say: THAT for and notwithstanding any act, deed, matter, or thing by the said party of the first part done, executed, committed, or knowingly or wilfully permitted or suffered to the contrary, he, the said party of the first part, now hath in himself good right, full power, and absolute authority to convey the said lands and other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said part of the third part, in manner aforesaid, and according to the true intent of these presents: AND that it shall be lawful for the said part of the third part, heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter upon, have, hold,

occupy, possess, and enjoy the said lands and premises hereby conveyed, or intended so to be, with their and every of their appurtenances, and to have, receive, and take the rents, issues, and profits thereof and of every part thereof to and for and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever of, from, or by him, the said party of the first part, or his heirs, or any person claiming or to claim by, from, under, or in trust for him, them, or any of them: AND THAT free and clear, and freely and absolutely acquitted, exonerated, and forever discharged or otherwise by the said party of the first part, or his heirs, well and sufficiently saved, kept harmless, and indemnified of, from, and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble, and incumbrance whatsoever, made, executed, occasioned, or suffered by the said party of the first part, or his heirs, or by any person claiming or to claim by, from, under, or in trust for him, them, or any of them: AND LASTLY, that he, the said party of the first part, his heirs, executors, or administrators, and all and every other person whomsoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest whatsoever, either at law or in equity, in, to, or out of the said lands and premises hereby conveyed or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him, them, or any of them, shall and will from time

to time and at all times hereafter, upon every reasonable request, and at the costs and charges of the said part of the third part, heirs or assigns, make, do, or execute, or cause to be made, done, or executed, all such further and other lawful acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the said part of the third part, heirs and assigns, in manner aforesaid, as by the said part of the third part, heirs and assigns, or their counsel in the law, shall be reasonably devised, advised, or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same and his heirs, executors, or administrators only, and so as no person who shall be required to make or execute such assurances shall be compellable, for the making or executing thereof, to go or travel from his usual place of abode.

In Witness Whereof, the said parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of . }

Received, on the day of the date of the within Indenture, the sum of , of lawful money of Canada, being the full consideration therein mentioned.

Signed in presence of .

Deed of Bargain and Sale.

FROM TWO JOINT TENANTS, ON SALE IN LOTS.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred , BETWEEN A. B., of, &c., and C. D., his wife, of the first part; E. F., of, &c., of the second part; and , of the third part. WHEREAS the said A. B. and E. F. have contracted and agreed with the said for the sale to of the parcel or tract of land and premises hereinafter mentioned or described, at or for the price or sum of . AND WHEREAS at the time of entering into such contract it was agreed that the sum of should be paid by the said to the said A. B. and E. F., in part payment of the said purchase money, and that the sum of , the residue thereof, should be secured to them by a mortgage of the said land and premises: AND in pursuance of the said agreement the said HATH paid to the said A. B. and E. F. the said sum of , as they do hereby respectively admit and acknowledge: And in further pursuance of the said agreement, an Indenture, by way of mortgage of the said lands and hereditaments. HATH already been prepared, and is intended to bear even date with, but to be executed immediately after the execution of, these presents, for securing the payment by the said to the said A. B. and E. F. of the said sum of .

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement on the part of the said

A. B. and E. F., and for the considerations hereinbefore expressed, and also in consideration of five shillings of lawful money of Canada to each of them, the said A. B. and C. D. his wife, and E. F., paid by the said at or immediately before the execution of these presents, the receipt whereof they do hereby respectively acknowledge, they, the said A. B. and C. D. his wife, and E. F. (and as to the said C. D., for the purpose, and for the purpose only, of barring and extinguishing her right and title to dower of and in the said parcel or tract of land and premises), HAVE, and each and every of them HATH, granted, bargained, sold, aliened, released, conveyed, assured, and confirmed, and by these presents DO, and each and every of them DOTH, grant, bargain, sell, alien, release, convey, assure, and confirm, unto the said , his heirs and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the , TOGETHER with all and singular houses, out-houses, buildings, yards, gardens, woods, ways, fences, waters, watercourses, easements, liberties, privileges, profits, emoluments, hereditaments, and appurtenances whatsoever, to the said parcel or tract of land and premises belonging, or in any wise appertaining, or therewith used and enjoyed, or known or taken as a part or parcel thereof, or of any part thereof: And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and all the estate, right, title, interest, dower, and right and title to dower, and particularly the dower, or right and title to dower, of her, the said

C. D., use, trust, inheritance, property, claim, and demand, both at law and in equity, of them, the said A. B. and C. D. his wife, and E. F., and each and every of them, of, in, to, or out of, the same parcel or tract of land and hereditaments, and every part and parcel thereof: TO HAVE AND TO HOLD the said parcel or tract of land, hereditaments, and all and singular other the premises hereby conveyed, or intended so to be, with their and every of their rights, members, and appurtenance, unto the said , his heirs and assigns, to the sole and only use of the said , his heirs and assigns, forever. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown. And the said A. B., so far only as concerns one undivided moiety or equal half part of the said parcel or tract of land and hereditaments hereby conveyed, or intended so to be, and the acts, deeds, and defaults of the said A. B., and of those claiming under him and the said E. F., so far only as concerns the other undivided moiety or equal half part of the said parcel or tract of land and premises, and the acts, deeds, and defaults of the said E. F., and of those claiming under him, do hereby, for themselves respectively, and for their respective heirs, executors, and administrators, covenant, promise, and agree to and with the said , his heirs and assigns, in manner following, that is to say:—THAT they, the said A. B. and E. F., at the time of the sealing and delivery of these presents, are, or that one of them is, rightfully and lawfully seised of a good, sure, perfect, absolute, and indefeasible estate

of inheritance, in fee simple, of and in the said parcel or tract of land and hereditaments hereinbefore described, and hereby conveyed, or intended so to be, with their and every of their appurtenances, and of and in every part and parcel thereof, without any manner of reservation, limitation, proviso, or condition, or any other matter or thing, to alter, charge, incumber, or defeat the same, save and except as appears by these presents: AND ALSO, THAT they now have in themselves, or one of them now hath in himself, good right, full power, and lawful and absolute authority to grant, bargain, sell, convey, and assure the said parcel or tract of land and hereditaments hereby conveyed, or intended so to be, and every part and parcel thereof, with the appurtenances, unto the said , his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents: AND ALSO, THAT it shall and may be lawful to and for the said , his heirs and assigns, peaceably and quietly to enter into and upon, have, hold, use, occupy, possess, and enjoy, the said land and premises, with the appurtenances, and to take the rents and profits thereof to and for his and their own use, without any eviction, interruption, hindrance, or denial whatsoever, from or by the said A. B. and E. F. respectively, or any person or persons whomsoever, having, or rightfully claiming or to claim, any estate, right, title, or interest, at law or in equity, of, in, to, or out of the same land and hereditaments, or any part thereof, by, from, through, under, or in trust for them, or either of them; AND that free and clear,

and freely and clearly acquitted, exonerated, and discharged of and from all arrears of taxes and assessments whatsoever, due or payable upon, or in respect of, the said land and premises, or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions, and recognizances, and all manner of other charges and incumbrances whatsoever (save and except a certain Indenture of Mortgage bearing date, &c., and made between, &c., for securing the sum of money in the same Indenture of Mortgage mentioned); AND ALSO, that upon payment by the said , his heirs, executors, administrators, or assigns, of the said sum of , with interest for the same, at the rate, and on and at the respective days and times, and in manner in and by the said hereinbefore in part recited Indenture of Mortgage, of even date with these presents, limited and appointed for payment thereof, respectively, they, the said A. B. and E. F., their heirs, executors, or administrators, shall and will cause and procure the said lands and hereditaments hereinbefore described, and hereby conveyed, or intended so to be, and every part thereof, to be well and effectually released and discharged by the said , his heirs, executors, administrators, or assigns, of and from the said Indenture of Mortgage, of the day of , one thousand eight hundred and , hereinbefore recited or referred to, so and in such manner as that the same shall cease to be a charge or incumbrance upon the same land and hereditaments, or any part thereof, in any manner whatsoever, and shall and

will in the mean time well and sufficiently indemnify, save harmless, and keep indemnified, the said , his heirs and assigns, and his and their lands and tenements, goods and chattels, and particularly the lands and hereditaments hereby conveyed, or intended so to be, and every part thereof, of, from, and against the same Indenture of Mortgage, and all payments, charges, covenants, stipulations, and agreements therein contained, and on the part and behalf of the said A. B. and E. F., their heirs, executors, administrators, or assigns, or any of them, to be made, executed, done, or performed: AND LASTLY, that they, the said A. B. and E. F., their heirs and assigns, and all and every other person or persons whomsoever, having and lawfully claiming, or who shall or may have or lawfully claim, any estate, right, title, trust, or interest, of, in, to, or out of the said lands and premises hereby conveyed, or intended so to be, or any part thereof, with their appurtenances, by, from, under, or in trust for them, the said A. B. and E. F., or either of them, their or either of their heirs or assigns, shall and will, from time to time, and at all times hereafter, at the proper costs and charges in the law, of the said , his heirs or assigns, make, do, suffer, and execute, or cause or procure to be made, done, suffered, and executed, but subject nevertheless, and without prejudice, to the said Indenture of Mortgage of even date with these presents, and to the said mortgage to the said , and the covenant hereinbefore contained in relation thereto, ALL such further and other reasonable act and acts, deed and deeds, devices, con-

veyances, and assurances in the law, for the further, better, and more perfectly and absolutely conveying and assuring of the said lands and hereditaments, with the appurtenances, unto the said , his heirs and assigns, as by the said , his heirs and assigns, or his or their counsel in the law, shall be reasonably devised, advised, or required.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Memorial to Deed of Bargain and Sale.

A MEMORIAL (to be registered pursuant to the Acts of Parliament in that behalf) of an INDENTURE OF BARGAIN AND SALE, bearing date the day of , in the year of our Lord one thousand eight hundred and , AND MADE BETWEEN , of the first part, , wi of the said part of the first part, of the second part, and , of the third part: WHEREBY IT IS WITNESSED, that the said part of the first part, in consideration of the sum of , of lawful money of Canada (the receipt whereof is thereby acknowledged), DID grant, bargain, sell, release, convey, and confirm unto the said part of the third part, heirs and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the , in the County of , &c. To hold the same, with all the privileges and appurtenances thereof, to the said part of the third part, heirs and assigns, to and their own use, forever: And the said party of the second part thereby barred her DOWER

of and in the said lands and premises. Which said Indenture is witnessed by .

AND this Memorial thereof is hereby required to be registered by , the said therein mentioned.

As WITNESS hand and seal , this day of , 18 .

Signed and sealed in the presence of . }

County of , to wit: , of , maketh oath and saith, that he was present, and did see the DEED to which the within MEMORIAL relates duly executed by , therein named: And also (together with another subscribing witness) that he did see duly execute the said MEMORIAL, and that he, deponent, is a subscribing witness to said DEED AND MEMORIAL, and that both the said Instruments were executed at , in the County of .

Sworn before me, at , in the Count of , this day of , 186 . }

A Commissioner for taking Affidavits in the Queen's Bench, in and for the Count of .

Or, *Judge, &c.*, or *Mayor, Consul, &c.*

Deed of Bargain and Sale.

SHORT FORM UNDER STATUTE.

THIS INDENTURE, made the day of , one thousand eight hundred and , in pursuance of the act to facilitate the conveyance of real property, BETWEEN , of the first part, ,

wife of the said party of the first part, of the second part, and , of the third part, WITNESSETH, that in consideration of , of lawful money of Canada, now paid by the said party of the third part to the said party of the first part (the receipt whereof is hereby by him acknowledged), he, the said party of the first part, doth grant unto the said party of the third part, heirs and assigns, forever, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the .

TO HAVE AND TO HOLD unto the said party of the third part, heirs and assigns, to and for and their sole and only use, forever. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown [*And subject also to the payment of a mortgage made by the party of the third part to the party of the first part, for securing the sum of , bearing date the day of , one thousand eight hundred and*].

THE said party of the first part covenants with the said party of the third part, that he has the right to convey the said lands to the said party of the third part, notwithstanding any act of the said party of the first part. AND that the said party of the third part shall have quiet possession of the said lands, free from all incumbrances. AND that the said party of the first part will execute such further assurances of the said lands as may be requisite. AND that he will produce the title-deeds enumerated hereunder, and allow copies to be made of them at the expense

of the said party of the third part. AND that the said party of the first part has done no act to incumber the said lands. AND the said party of the first part releases to the said party of the third part all his claims upon the said lands. AND the said party of the second part, wife of the said party of the first part, hereby bars her DOWER in the said lands.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals.

Signed, sealed, and delivered }
in the presence of . }

RECEIVED, on the date of this Indenture, the sum of , of lawful money of Canada, being the full consideration herein mentioned.

Witness.

Deed of Bargain and Sale under Statute.

ANOTHER FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , in pursuance of the act to facilitate the conveyance of real property, BETWEEN , WITNESSETH, that in consideration of , of lawful money of Canada, now paid by the part of the part to the part of the first part, the receipt whereof is hereby acknowledged by , the said part of the first part, , the said part of the first part, DO HEREBY GRANT unto the said part of the part, heirs and assigns, forever, ALL AND SINGULAR tha certain parcel or tract of land and premises situate, lying, and being in the of

, in the county of , and province of Canada, containing, by admeasurement, , and which is composed of, comprises, and may be known as follows, that is to say:— TO HAVE AND TO HOLD unto the said part of the part, heirs and assigns, to and for sole and only use, forever. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown. AND the said part of the first part do covenant with the said part of the part, that ha the right to convey the before-mentioned land to the said part of the part, heirs and assigns . AND that the said part of the part shall have quiet possession of the said land, free from all incumbrances, . AND that the part of the first part will execute such further assurances of the said land as may be requisite. AND that will produce the title-deeds enumerated hereupon, and allow copies to be made of them at the expense of the said part of the part, AND that the part of the first part ha done no [*other*] act to incumber the said land. AND the said part of the first part release to the said part of the part all claims upon the said land.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, upon the day and year first above written.

Signed, sealed, and delivered in the presence of .

THE part of the first part in the within deed

named hereby acknowledge receipt of the full consideration therein mentioned.

In presence of .

Memorial to Bargain and Sale under Statute.

A MEMORIAL, to be registered, of an Indenture made the day of , one thousand eight hundred and , in pursuance of the act to facilitate the conveyance of real property, BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part: WHEREBY the said part of the first part, in consideration of , of lawful money of Canada, then paid by the said part of the third part to the said part of the first part (the receipt whereof is thereby acknowledged), did grant unto the said part of the third part, heirs and assigns, forever, all and singular th certain parcel or tract of land and premises situate, lying, and being in the . TO HAVE AND TO HOLD the said above granted premises unto the said part of the third part, heirs and assigns, to and for and their sole and only use, forever; SUBJECT to the reservations, limitations, provisoes, and conditions in the original grant from the Crown.

AND the said party of the second part thereby barred her DOWER in the said lands: which said indenture is witnessed by . AND this memorial thereof is hereby required to be registered by , the said grant therein named.

WITNESS hand and seal , the . day of

, in the year of our Lord one thousand eight hundred and .

Signed and sealed in the presence of . }

Count of , to wit: , above named, maketh oath and saith, that he was present, and saw the deed of which the within is a memorial, duly executed by the therein named , and the said memorial duly executed by the therein named for registry thereof, and that he is one of the subscribing witnesses both to the said deed and memorial, and that the same were respectively executed at .

Sworn before me, at , this day of , A. D. 18 . }

Judge, &c., or, a Commissioner for taking Affidavits in the Queen's Bench, in and for the Count of .

Deed of Bargain and Sale of Lands.

ON SALE BY MORTGAGEE.

THIS INDENTURE, made the day of , in the year, &c., 18 , BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part. WHEREAS, E. F., of, &c., did, by a certain Indenture of Mortgage, dated the day of , in the year, &c., for the consideration of , bargain and sell unto the said A. B., and to his heirs and assigns, forever, all that certain, &c.; TOGETHER WITH all and singular the hereditaments and appurtenances thereunto belonging: TO HAVE AND TO HOLD the said

granted and bargained premises, with the appurtenances, unto the said A. B., his heirs and assigns, to the only proper use and behoof of the said A. B., his heirs and assigns, forever; PROVIDED, NEVERTHELESS, and the said Indenture of Mortgage was thereby declared to be upon condition, that if the said E. F., his heirs, executors, or administrators, should well and truly pay unto the said A. B., his executors, administrators, or assigns, the just and full sum of , with lawful interest for the same, on or before the day of , in the year, &c., according to the condition of the said Indenture of Mortgage, that then, and in such case, the said indenture should be void and of no effect: AND the said E. F. did, by the said indenture, for himself, his heirs and assigns, agree with the said A. B., his heirs, executors, administrators, and assigns, that in case it should so happen that the said sum of , and the interest for the same, should be due and unpaid at the time limited for the payment thereof, in the whole or in part thereof, that then it should and might be lawful for the said A. B., his heirs or assigns, at any time after default in payment, to bargain, sell, and dispose of the said mortgaged premises, with the appurtenances, at public auction, and out of the moneys to arise from the sale thereof to retain and keep the said sum of , and the interest, or so much thereof as might be due, together with the costs and charges of such sale or sales, rendering the overplus money, if any, to the said E. F., his heirs, executors, administrators, or assigns: AND whereas the said E. F. did not pay to the said

A. B. the said sum of money, with the interest, at the time limited for payment, or at any time since; and the said A B. hath, therefore, in pursuance of the authority so given to him as aforesaid, caused the premises to be advertised and sold at public auction, and the same have been knocked down to the said C. D., for , being the highest sum bid for the same.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the said A. B., in pursuance of the power aforesaid, and also for and in consideration of the said sum of to him in hand paid by the said C. D. at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm, unto the said C. D., and to his heirs and assigns, forever, all the farm, piece, or parcel of land above mentioned, together with the hereditaments and appurtenances, as the same is described and conveyed by said Indenture of Mortgage; and all the estate, right, title, interest, claim, and demand, at law and in equity, of him the said A. B., and also of the said E. F., as far as the said A. B. hath power to grant and convey the same, of, in, and to the premises, and every part and parcel thereof: To have and to hold the said above granted and bargained premises, with the appurtenances, unto the said C. D., his heirs and assigns, to the sole and only proper use and behoof of the said C. D., his heirs and assigns, forever.

IN WITNESS WHEREOF, the parties have hereunto

set their hands and seals, the day and year first above written.

Signed, sealed, &c.

Deed of Gift of Lands.

THIS INDENTURE, made the day of in the year of our Lord one thousand eight hundred and , BETWEEN A. B., of the township of , in the county of , yeoman, of the one part, and C. D. (eldest son and heir apparent of the said A. B.), of the other part. WITNESSETH, that the said A. B., as well for and in consideration of the natural love and affection which he hath and beareth unto the said C. D., as also for the better maintenance, support, livelihood, and preferment of him the said C. D., HATH given, granted, aliened, enfeoffed, and confirmed, and by these presents DOTH give, grant, alien, enfeoff, and confirm, unto the said C. D., his heirs and assigns, ALL THAT parcel or tract of land, &c. [*describing the premises*], together with all and singular houses, out-houses, edifices, buildings, barns, stables, courts, curtilages, gardens, orchards, woods, underwoods, ways, waters, watercourses, advantages, and appurtenances, whatsoever, to the said parcel or tract of land and premises belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits of the same, and all the estate, right, title, interest, property, claim, and demand whatsoever of him the said A. B. of, in, and to the said parcel or tract of land and premises, and of, in, and to every part and parcel thereof, with their and

every of their appurtenances, and all deeds, evidences, and writings concerning the said premises. To HAVE AND TO HOLD the said parcel and tract of land, and all and singular other the premises hereby granted and confirmed, unto and to the only proper use and behoof of the said C. D., his heirs and assigns, forever.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year above written.

Certificate of Acknowledgment by Married Woman.

I [*or* we, *inserting the name or names, &c.*] do hereby certify that on this day of , at , the within deed was duly executed in my [*or* our] presence by A. B., of , wife of , one of the grantors therein named, and that the said wife of the said , at the said time and place being examined by me (*or* us) apart from her husband, did appear to give her consent to convey her estate in the lands mentioned in the said deed freely and voluntarily, and without coercion or fear of coercion on the part of her husband or of any other person or persons whatsoever.

A. B., *Judge*, or,
C. D., *J. P.*
E. F., *J. P.*

CHAPTER XI.

Of Line-Fences and Water-Courses.

We purpose noticing in this chapter the statutory provisions affecting line-fences and water-courses, for the guidance of owners of neighboring lots. The statute which regulates these matters is cap. 57 of the Cons. Stat. U. C.

Each of the parties occupying adjoining tracts of land must make, keep up, and repair a just proportion of the division or line-fence on the line dividing such tracts, and equally on either side thereof. (S. 1.)

Any fence coming within the meaning of a lawful fence in any by-law of the municipal council in that behalf, is to be considered a lawful fence; and when no such by-law exists, any fence-viewers, when called upon, are to exercise their own judgment, and decide what they consider to be a lawful fence. (S. 2.)

The owner of the whole or part of a division or line-fence, which forms part of the fence inclosing the occupied or improved land of another person, may not take down or remove any part of such fence:

1. Without giving at least twelve months' previous notice of his intention to the owner or occupier of such adjacent inclosure;

2. Nor unless such last-mentioned owner or occupier, after demand made upon him in writing by the

owner of such fence, refuses to pay therefor a sum to be determined, as provided in the next sub-section;

3. Nor, if such owner or occupier will pay to the owner of such fence, or of any part thereof, such sum as three fence-viewers, or a majority of them, in writing, determine to be the reasonable value thereof. (S. 3.)

When any land which has laid uninclosed or in common is afterwards inclosed or improved, the occupier must pay to the owner of the division or line-fence standing upon the divisional line between such land and the inclosure of any other occupant or proprietor, a just proportion of the value thereof. (S. 4.)

When a water-fence, or a fence running into the water, is necessary, the same is also to be made in equal parts, unless the parties otherwise agree. (S. 5.)

When lands belonging to or occupied by different persons are divided from each other by any river, brook, pond, or creek, which of itself is not a sufficient barrier, and it is impracticable to fence upon the true boundary-line, the fence shall be set up on one side of the river, brook, pond, or creek, or partly on one side and partly on the other, as may be just. (S. 6.)

When it is the joint interest of parties resident to open a ditch or water-course for the purpose of letting off surplus water from swamps or low miry lands, in order to enable the owners or occupiers thereof to cultivate or improve the same, such several parties shall open a just and fair proportion of such

ditch or water-course, according to their several interests. (S. 7.)

Three fence-viewers of the municipality, or a majority of them, may decide all disputes between the owners or occupants of adjoining lands, or lands so divided or alleged to be divided as aforesaid, in regard to their respective rights and liabilities under this act, and also all disputes respecting the opening, making, or paying for ditches and water-courses, under this act. (S. 8.)

Every determination or award of fence-viewers shall be in writing, signed by such of them as concur therein; and they shall transmit the same (or a certified copy thereof) to the clerk of the municipality, and shall also deliver a copy to every party requiring the same, and such determination or award shall be binding on the parties thereto. (S. 9.)

When the dispute is as to the commencement or extent of the part of the fence to be made or repaired by either party, or as to the opening of a ditch or water-course, or as to the part, width, depth, or extent that any person should open or make, either party may by writing notify the fence-viewers of the dispute, and name in the notice for the investigation thereof the time and place of meeting, and shall also notify the other party to appear at the same time and place. (S. 10.)

On receiving such notice, the fence-viewers shall attend at the time and place named, and, after being satisfied that the other party has been also duly notified, they shall examine the premises and hear the parties and their witnesses, if demanded, and, according to the

subject-matter of the reference, shall decide the commencement or extent of the part of the fence which either party claims to have made or repaired, or refuses to make or repair, or shall divide or apportion the ditch or water-course among the several parties, having due regard to the interests of each in the opening thereof, and shall fully determine the matters in dispute. (S. 11.)

On any reference regarding the opening or making of a ditch or water-course, the fence-viewers shall decide what length of time each of the parties shall have to open the share of the ditch or water-course which the fence-viewers decide each such party shall open; and if it appears to the fence-viewers that the owner or occupier of any tract of land is not sufficiently interested in the opening of the ditch or water-course to make him liable to perform any part thereof, and at the same time that it is necessary for the other party that such ditch should be continued across such tract, they may award the same to be done at the expense of such other party; and after such award the last-mentioned party may open the ditch or water-course across the tract, at his own expense, without being a trespasser. (S. 12.)

When, by reason of any material change of circumstances in respect to the improvement and occupation of adjacent lots or parcels of land, an award previously made ceases, in the opinion of either of the parties, to be equitable between them, such party may obtain another award of fence-viewers by a like mode of proceeding; and if the fence-viewers called upon to make a subsequent award find no reason for

making an alteration, the whole cost of the reference shall be borne by the party at whose instance it has been made. (S. 13.)

If any party neglects or refuses, upon demand made in writing as aforesaid, to open or make and keep open his share or proportion of the ditch or water-course allotted or awarded to him by the fence-viewers within the time allowed by them, any of the other parties may, after first completing his own share or proportion, open the share or proportion allotted to the party in default, and shall be entitled to recover not exceeding forty cents per rod for the same from the party so in default. (S. 14.)

If after an award of fence-viewers, or after being required by a demand in writing by the party occupying the adjoining tract or a tract separated therefrom by a river, pond, or creek, a party in the occupation of any tract of land neglects or refuses for a period of thirty days to make or repair (as the case may be) his proportion of the division or line-fence between his tract and such adjoining or separated tract, or if the party making the demand neglects or refuses for the like period to make or repair his own proportion of the fence, either party, after first completing his own proportion, may make or repair, in a substantial manner and of good sound materials, the whole or any part of the fence which ought to have been made or repaired by the other party, and may recover from him the value thereof. (S. 15.)

To ascertain the amount payable by any person who under the authority of this act makes or repairs a fence, or makes, opens, or keeps open any ditch or

water-course which another person should have done, and to enforce the payment of such amount, the following proceedings shall be taken:—

1. Any of the persons interested may apply to a justice of the peace residing within the municipality or township in which any such fence is situated, and if there be no such justice residing therein, then to any justice of the peace residing in any adjacent municipality or township, and thereupon such justice shall issue a summons under his hand and seal, directed by name to three fence-viewers of the municipality in which the fence is situated, requiring them to attend at the place and on the day and hour therein mentioned, to view such fence and to appraise the same.

2. The justice shall at the same time issue a summons to the party so having neglected or refused to make or repair his proportion thereof (who shall thenceforth be considered the defendant in the case), requiring him to appear at the same time and place to show cause why the party claiming payment (who shall thenceforth be considered the plaintiff in the case) should not recover the same.

3. The fence-viewers shall be personally served with the summons at least four days before the day named for their attendance.

4. If either party desires to procure the attendance of any person to give evidence before the fence-viewers, the justice shall, upon the application of such party, issue a summons to such witness or witnesses to attend before the fence-viewers at the time and place mentioned in the summons to the fence-viewers.

5. The fence-viewers, when met at the time and

place appointed, shall, whenever desired by either party, or whenever they themselves think it proper, may administer an oath to any witness, which oath is to be in the following form:—

"You do solemnly swear that you will true answer make to such questions as may be asked of you by either of the fence-viewers now present, touching the matters which they are now to examine and determine. So help you God."

6. The fence-viewers, or any two of them, being present, shall, after having duly examined the fence and received evidence, determine whether the plaintiff is entitled to recover any and what sum from the defendant.

7. In case the commencement or extent of the part of the division or line-fence which each should make or repair had not been previously determined by the award of fence-viewers, the fence-viewers named in the summons, or any two of them, shall determine the same; and if they determine that the plaintiff is entitled to recover from the defendant, they shall also state what distance of fence the defendant should have made or repaired.

8. The fence-viewers, if required by either party, before they report, shall give to such party a copy of their determination.

9. The fence-viewers shall report their determination in writing, under their hands, to the justice who issued the summons; and such determination shall be final.

10. The justice to whom the determination of the fence-viewers is returned shall transmit the same to

the clerk of the division court having jurisdiction over that part of the municipality, and shall certify and transmit a copy thereof to the clerk of the municipality, to be entered in the book in which the municipal proceedings are recorded.

11. After the expiration of forty days from the time of the determination, the clerk of the division court shall issue an execution against the goods and chattels of the defendant in the same manner as if the party in whose favor the determination has been made had recovered judgment in the division court for the sum which the fence-viewers have determined him to be entitled to receive, with costs. (S. 16.)

Fees. (S. 17.)

To the Justice of the Peace.

For summons to fence-viewers, twenty-five cents.

For subpœna which may contain three names, twenty-five cents.

For transmitting copy of fence-viewers' determination to division court and to clerk of the municipality, twenty-five cents.

To the Fence-Viewers.

One dollar per day each; if less than half a day employed, fifty cents.

To the Bailiff or Constable employed.

For serving summons or subpœna, twenty cents.

Mileage—per mile, six and two-thirds cents.

To witness—per day, each fifty cents.

Upon the party in whose favor the determination of the fence-viewers has been made making an affidavit that such fees have been duly paid and disbursed to the persons entitled thereto, the clerk shall include the amount thereof in the execution, and, when collected, shall pay over the same to the party. (S. 18.)

CHAPTER XII.

Of Landlord and Tenant—Leases, &c.

A LEASE, or contract for the letting and hiring of realty (as houses, farms, &c.), is a contract whereby the temporary use and possession of a house or land are granted by the owner to the hirer for a stipulated or implied remuneration. He who grants the possession and use of the property to be enjoyed for hire, is called the lessor, or landlord; and he who has the enjoyment of it, paying the rent or hire, is called the lessee, or tenant. The stipulated or implied remuneration is denominated rent. A lease may be made for the life either of the landlord or the tenant, or it may be made for any number of years, or it may be at will,—that is, determinable at any moment at the will either of the lessor or lessee. An agreement for a lease must be in writing, as required by the Statute of Frauds (29 Car. II., c. 3, s. 4), before referred to; and all leases exceeding three years in duration must now be authenticated by a deed. A

lease in writing, *not under seal*, for a term exceeding three years in duration will amount only to an *agreement* for a lease for the term specified.

A letting and hiring of land for a year or any less period may arise, by implication of law, from the relative situations of the parties and the silent language of their actions and conduct, as well as by express words and stipulations. Whenever the house or land of one man has been occupied and used by another, the presumption is that the use and occupation are to be paid for, and the landlord is entitled to maintain an action to recover a reasonable hire and reward for the use of the land, unless the tenant can show that he entered into possession of the property under circumstances fairly leading to an opposite conclusion. A landlord, on the other hand, who has permitted a tenant to occupy property, and has received rent from the latter for such use and occupation, will be bound by his own acts, and cannot afterwards treat such tenant as a trespasser, and turn him out of possession, without a proper notice to quit.

Leases may be made to commence from a day that is passed, or from a day to come, as well as from the day of the making of the lease.

If a tenant holds over after the expiration of his lease, and the landlord receives from him rent which has accrued due subsequently to the expiration of the lease, he becomes a tenant from year to year upon the terms of the original demise.

A tenancy from year to year is ordinarily implied from the payment and acceptance of rent; but this *prima facie* presumption may, of course, be rebutted

by showing that the money was paid or received by mistake.

If an annual rent is reserved, the holding is from year to year, although the lease or agreement provides that the tenant shall quit at a quarter's notice. Such a contract differs only from the usual letting from year to year in the agreement by the parties to reduce the ordinary six months' notice to quit to three months. But if it is expressly agreed that the tenant is always to be subject to quit at six months' notice, given him at any time, this constitutes a *half-yearly* tenancy, and the lessee will be presumed to hold from six months to six months from the time that he entered as tenant. If he is to hold till one of the parties shall give to the other three months' notice to quit at the expiration of such notice, the tenancy will be a quarterly tenancy.

The landlord's remedy for the non-payment of rent is either by action or distress. Where the rent reserved is a fixed ascertained rent, the landlord may distrain. But if no certain ascertained rent has been reserved or covenanted or agreed to be paid, there is no right to distrain: the landlord can only recover a fair compensation for the use and occupation of the premises in an action at law. It is essential to the lawful exercise of the power of distress that the distrainor be the *immediate* landlord or owner of the estate. If after the making of the lease the landlord has sold and transferred his estate or interest to some third party, he has no right or power to distrain. A landlord cannot distrain twice for the same rent, unless the distress has been withdrawn at the instance

or request of the tenant, or unless there has been some mistake as to the value of the things taken.

When an annual rent is reserved, it may be made payable monthly or quarterly, or at any period of time that the parties may think fit to appoint, whatever may be the duration of the term of hiring. It may also be made payable in advance, so as to entitle the landlord to distrain for it at the commencement instead of at the end of each quarter. There may be a yearly tenancy with an annual rent, payable quarterly, or there may be a quarterly tenancy with a quarterly rent, payable weekly or monthly, or at any successive periods of time.

A distress by the landlord after tender of the rent to him or to his bailiff, authorized to distrain, without a fresh demand on the tenant, is illegal; and if the landlord distrains before the rent has become due, the tenant may resist the entry and seizure by force, and, after a seizure has been made, he may rescue his goods at any time before they have been impounded; but when once the goods have been impounded they are in the custody of the law, and the tenant cannot then break pound and retake them. As soon as the distrainor has made out and delivered to the tenant, or has left upon the premises, an inventory of the goods he has taken, they are said to be impounded.

Formerly the landlord could not have distrained *after* the expiration of the term for rent that accrued due *before* the determination thereof; but now, by the statute 8 Ann. c. 14, ss. 6, 7, landlords are authorized to distrain, provided the distress be made within six months after the determination of the lease, and

during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due.

The tenant has the whole day on which the rent becomes due to pay such rent; and a distress, therefore, cannot be made until the day after the day appointed for the payment of the rent. Unless the rent is made payable at some particular *specified* place, the tenant is bound to seek out the landlord and pay or tender him the money. A landlord or his bailiff cannot lawfully break open gates or break down inclosures, or force open the *outer* door of any dwelling-house, or building, in order to make a distress, but he may draw a staple or undo fastenings which are ordinarily opened from the outside of the house. A distress cannot be made in the night, or after sunset, or before sunrise, nor upon land which does not form part or parcel of the demised premises, and from which the rent reserved does not issue, unless the goods of the tenant have been removed thereto from the demised premises within sight of the distrainor coming to distrain, or unless they have been fraudulently removed thereto by the tenant to avoid the distress. If the tenant fraudulently or clandestinely removes goods and chattels from the demised premises, to prevent the landlord from distraining them for rent in arrear, the landlord may within thirty days after such removal take and seize them wherever they may be found, unless they have in the mean time been sold bona fide to some person ignorant of the fraud. But if it be necessary to break open any door in order to seize such goods, the landlord

must call a constable to his assistance, and must force the door in his presence and in the daytime. If it appears that rent was due at the time of such removal, and that the goods were taken away on or after the day the rent became due, for the purpose of putting them out of reach of a distress, the removal is fraudulent. It is not necessary that the rent should be in *arrear* and a right to distrain exist at the time of the removal. Therefore, if the goods are removed on quarter-day, they may be followed, though the rent is not in arrear, and there is no right to distrain, until the day after. If there are sufficient goods on the demised premises, independently of the goods removed, to satisfy the rent, the removal is not fraudulent, and the landlord cannot follow them.

Goods in the custody of a sheriff's officer or bailiff, having been seized under an execution or attachment, cannot be distrained; but before such goods can be removed the sheriff or bailiff must pay to the landlord one year's rent, or the rent for any less period that may happen to be due at such seizure. And by the Division Courts Act it is enacted that when goods are taken in execution under the process of any division court the landlord shall be entitled, by writing under his hand, or under the hand of his agent, stating the terms of holding, and the rent payable for the same, and delivered to the bailiff making the levy, to claim any rent in arrear then due to him not exceeding the rent of four weeks where the tenement has been let by the week, and not exceeding the rent accruing due in two terms of payment where

the tenement has been let for any other term less than a year, and not exceeding in any case the rent accruing due in one year.

Property of third parties on the demised premises in the possession and use of the owners, and not in the possession or under the charge of the tenant, cannot be distrained for rent; nor can the goods and chattels of third parties placed upon the demised premises in the possession and under the care of the tenant in the ordinary course of trade; nor the goods and chattels of travellers in hotels. Fixtures, implements of trade and husbandry, and beasts of the plough are privileged from distress so long as they are in actual use, but not afterwards, or unless there are other goods on the demised premises sufficient to satisfy the rent without them.

It is not necessary, in order to make a distress for rent, that the landlord or his agent should take corporal possession of the things intended to be distrained. It is sufficient if the landlord in person, or by deputy, enters upon the demised premises and announces the distress to the tenant or his servants, or the persons in actual occupation of the property. When the landlord distrains by an agent or bailiff, he should give his agent authority in writing for the purpose. This authority is called a *Distress Warrant.*

As soon as the distress is made, whether by the landlord or his bailiff, an inventory of the goods distrained should be made and served upon the tenant, together with the notice of the distress. The notice of the distress should set forth the amount of rent

distrained for, and the particular things taken. If the tenant, after he has received notice, neglects for five days—to be computed inclusive of the last day and exclusive of the day of seizure—to pay the rent or replevy the goods, the landlord may sell them for the best price that can be got for them, and apply the purchase-money in discharge of the rent and the costs of the distress and sale, paying the overplus, if any, to the tenant.

The costs of distresses under eighty dollars are regulated by Cons. S. U. C., c. 123, and are as follows:—

Levying distress	$1 00
Man keeping possession, per diem	75
Appraisement, whether by one appraiser or more, two cents in the dollar on the value of the goods.	
If any printed advertisement, not to exceed in all . .	1 00
Catalogues, sale, and commission, and delivery of goods, five cents in the dollar on the net produce of the sale.	

Every broker or other person who shall make and levy any distress is to give a copy of his charges, and of all the costs and charges of the distress, signed by him, to the person on whose goods and chattels any distress shall have been levied, although the rent demanded may exceed the sum of eighty dollars. When the rent distrained for exceeds eighty dollars, the costs are not limited to any particular amount or fixed scale of charge; but they must be fair and reasonable.

When, in consequence of the rent not being fixed and ascertained, the landlord has no right to distrain, we have before seen that his only remedy is by action at law, in which he can recover from the tenant a proper compensation for the use and occupation of

the premises. In such cases we must refer the landlord to his professional adviser, it being beyond the scope of this work to detail an action at law: indeed, it would be useless to do so.

With regard to repairs, we may say, generally, that in the absence of an express covenant or agreement to repair, there results from the demise and acceptance of the lease by the tenant an implied covenant or promise to use the property demised in a tenant-like and proper manner; to take reasonable care of it, and restore it, at the expiration of the term for which it is hired, in the same state and condition as it was in when demised, subject only to the deterioration produced by ordinary wear and tear, and the reasonable use of it for the purpose for which it was known to be required.

When a lease is determinable on a certain event or at a particular period, no notice to quit is necessary, because both parties are equally apprized of the determination of the term. If, therefore, a lease be granted for a term of years, or for one year only, no notice to quit is necessary at the end of the term. In the case of a tenancy at will, no notice to quit is necessary, but there must be a formal demand of possession, or notice of the determination of the will, on the part of the landlord, before any action of ejectment can be brought. The tenant at will, too, in order to discharge himself from his liability for rent or for a reasonable compensation for use and occupation, must give notice to the landlord of the fact of his abandonment of the possession, and of his election to rescind the contract and put an end to the tenancy.

If the holding is a general holding for a year, and onwards from year to year so long as both parties please, a half-year's notice must be given on either side in order to determine the yearly hiring and tenancy; and this notice may be given in the first as well as any subsequent year of the tenancy. The notice may be in writing or by word of mouth. In the case of a yearly tenancy it must be a six months' notice, to expire at that period of the year corresponding with the period at which the tenancy commenced.

It is better that a notice to quit should be served upon the landlord or tenant (as the case may be) personally; but it is sufficient if served upon the wife or servant at the dwelling-house of the party to be served.

A landlord may recover possession of his property by ejectment or proceedings under the "Overholding Tenants Act:" in either case it will be necessary for him to employ an attorney.

The following forms may be found useful:—

Distress Warrant.

To A. B., my bailiff in this behalf. DISTRAIN the goods and chattels liable to be distrained for rent, in and upon the [house] now or lately in the tenure or occupation of C. D., situate at , in the county of , and province of Canada, for the sum of , being rent due to me for the same, on the day of , in the year of our Lord one thousand eight hundred and . AND for the purpose aforesaid, distrain, within the time, in the

manner, and with the forms prescribed by law, all such goods and chattels of the said C. D., wheresoever they shall be found, as have been carried off the said premises, but are nevertheless liable, by law, to be seized as a distress for the rent aforesaid. AND proceed thereupon for the recovery of the said rent as the law directs. AND for your so doing this shall be your sufficient warrant and authority.

WITNESS my hand and seal, this day of , in the year of our Lord one thousand eight hundred and .

WITNESS, E. F. [L. S.]

Notice of Distress.

NOTICE is hereby given that the cattle, goods, and chattels, distrained for rent, on the day of , 18 , by me, , as bailiff to , the landlord of the premises of , the tenant, will be sold by public auction on the day of , 18 , at o'clock. Which cattle, goods, and chattels are as follows, that is to say:

Stratford, day of , 18 .

A. B., *Bailiff.*

Inventory.

AN INVENTORY of the several goods and chattels distrained by me , the day of , in the year 18 , in the house, out-houses, and lands of , situate , by authority and on behalf of , your landlord, for the sum of , being rent due to the said on the day of , 18 .

In the dwelling-house . On the premises .

Mr. . TAKE NOTICE, that as the bailiff to , your landlord, I have this day distrained, on the premises above mentioned, the several goods and chattels specified in the above inventory, for the sum of , being rent due to the said on the day of , 18 , for the said premises; and that unless you pay the said rent, with the charges of distraining for the same, or replevy within five days from the date hereof, the said goods and chattels will be appraised, and sold according to law.

Given under my hand, the day of , in the year of our Lord one thousand eight hundred and .

WITNESS,

A. B., *Bailiff.*

Farming Lease, Agreement for.

THIS AGREEMENT, made this day of , in the year, &c., BETWEEN A. B., of , of the one part, and C. D., of , of the other part, WITNESSETH: That the said A. B. shall, on or before the first day of next, make and execute unto the said C. D., his executors, administrators, and assigns, a valid lease of all that piece or parcel of land situate, &c., with the appurtenances thereunto belonging, for the term of years, from the first day of , at the yearly rent of , payable half-yearly, clear of all deductions for taxes, or on any other account whatever: the first payment of

said rent to be made on the first day of next; and at and under the further yearly rent of for every acre, and so in proportion for a less quantity of meadow or pasture ground, which shall be ploughed or converted into tillage, contrary to a covenant to be contained in said lease, as hereinafter directed; the first payment of said last-mentioned rent to be made on the first half-yearly day after such conversion into tillage as aforesaid. And in the said lease there shall be contained covenants on the part of the said C. D., his executors, administrators, and assigns, to pay the aforesaid rents, and to pay all taxes and assessments; for doing all manner of repairs to the buildings, hedges, ditches, rail, and other fences (the said A. B. providing upon the premises, or within two miles thereof, rough timber, bricks, tiles, and lime for the doing thereof, to be conveyed by the said C. D., his executors, administrators, or assigns); for permission for the said A. B., his heirs or assigns, at all seasonable times, to view the state of the premises; that the said C. D., his executors or administrators, shall not carry off from the farm any hay, straw, or other fodder, and that the said C. D., his executors, administrators, or assigns, shall spread on some part of the said lands, in a husbandlike manner, all the manure and compost which shall arise from the said farm, and shall, in all respects, cultivate the same in a husbandlike manner, and according to the usual course of husbandry practised in the neighborhood, and shall leave all the manure and compost of the last year, for the use of the landlord or succeeding tenants. That the

said C. D., his executors, administrators, or assigns, shall, in the summer immediately preceding the determination of the said term, to be granted as aforesaid, prepare for seed, in a husbandlike manner, such part of the land as shall be in a course of fallow, and fit to be sown with a crop the ensuing season, and lay down with clover-seed and rye-grass acres of the arable land which shall be then in tillage, sowing upon each acre thereof pounds of the best clover-seed, and bushel of the best rye-grass seed. And in the said lease there shall be contained a proviso for re-entry by the said A. B., his heirs or assigns, in case of the non-payment of rent for the space of twenty days, or non-performance of the covenants. And there shall be contained covenants on the part of the said A. B., his heirs and assigns, for quiet enjoyment. That the said A. B., his heirs and assigns, shall permit the said C. D., his executors, administrators, or assigns, to have the use of the barns and stables adjoining the said premises, and the stack-yard and farm-yard, until one month after the expiration or determination of the said term, for the convenience of threshing out the last year's crops of corn and grain, and feeding his or their cattle with the straw and fodder, so that the same may be made into manure, to be left on the said premises, as aforesaid; and also some convenient room in the farm-house for his or their servants to lodge and diet in, until the time aforesaid, without any recompense being made for the same respectively.

In Witness, &c.

Lease of House.

THIS INDENTURE, made the , day of , in the year of our Lord one thousand eight hundred and , BETWEEN of the first part, and , of the second part, WITNESSETH, that in consideration of the rents, covenants, and agreements, hereinafter reserved and contained on the part of the said part of the second part, executors, administrators, and assigns, to be paid, observed, and performed, , the said part of the first part, HA demised and leased, and by these presents DO demise and lease, unto the said part of the second part, executors, administrators, and assigns, ALL THAT messuage or tenement situate, lying, and being , TOGETHER with all houses, out-houses, yards, and other appurtenances thereto belonging, or usually known as part or parcel thereof, or as belonging thereto : TO HAVE AND TO HOLD the said premises for and during the term of , to be computed from the day of , one thousand eight hundred and , and from thenceforth next ensuing, and fully to be complete and ended.

YIELDING AND PAYING therefor yearly and every year during the said term hereby granted unto the said part of the first part, heirs, executors, administrators, or assigns, the sum of , to be payable on the following days and times, that is to say, the first of such payments to become due and be made on the day of next.

PROVIDED ALWAYS, and these presents are upon

this express condition, that if the said yearly rent, hereby reserved, or any part thereof, shall at any time remain behind or unpaid for the space of twenty-one days next over or after any of the days on which the same shall become due and payable, then, and in every such case, it shall be lawful for the said part of the first part, heirs, executors, administrators, or assigns, into and upon the said premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy, as if these presents had never been executed.

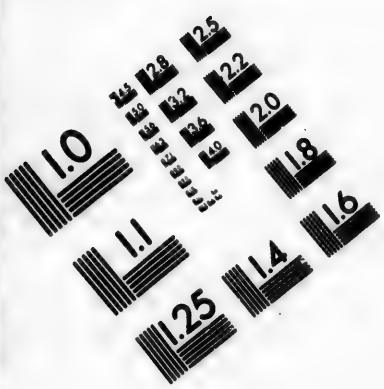
And the said part of the second part, for , heirs, executors, administrators, and assigns, do hereby covenant, promise, and agree to and with the said part of the first part, heirs, executors, administrators, and assigns:

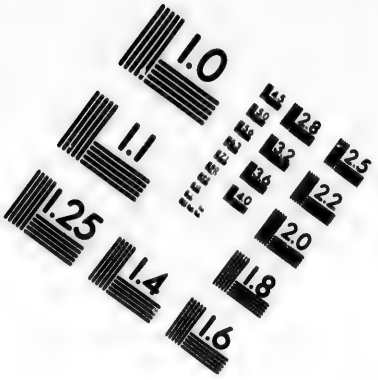
That , the said part of the second part, executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, to the said part of the first part, heirs, executors, administrators, or assigns, the said yearly rent hereby reserved at the times and in the manner hereinbefore appointed for payment thereof.

And also shall and will, from time to time, and at all times during the said term, keep in good and sufficient repair the said premises hereby demised (reasonable wear and tear and accident by fire excepted), and the same so kept in repair shall and will, at the end, expiration, or other sooner determination of the said term, peaceably and quietly yield and deliver up to the said part of the first part, heirs, executors, administrators, or assigns.

And also shall and will well and truly pay, or cause to be paid, all taxes, rates, levies, duties, charges, assessments, and impositions whatsoever, whether Parliamentary, local, or otherwise, which now are, or which during the continuance of this demise shall at any time be, rated, taxed, or imposed on or in respect of the said demised premises, or any part thereof.

And also that it shall be lawful for the said part of the first part, heirs, executors, administrators, and assigns, and their agents respectively, either alone or with workmen or others, from time to time at all reasonable times in the daytime, during the said term, to enter upon the said demised premises, and every part thereof, to view and examine the state and condition thereof; and in case any want of reparation or amendment be found on any such examination, the said part of the second part, executors, administrators, or assigns, shall and will from time to time cause the same to be well and sufficiently repaired, amended, and made good, within one month next after notice in writing shall have been given to them or left at or upon the said demised premises for that purpose. And if the said part of the second part, executors, administrators, or assigns, fail in making the necessary repairs in manner hereinbefore described, that it shall be lawful for the said part of the first part, heirs, executors, administrators, and assigns, and agents, to enter into and upon the said hereby demised premises, and have the same repaired in a proper manner, and to render the account for such





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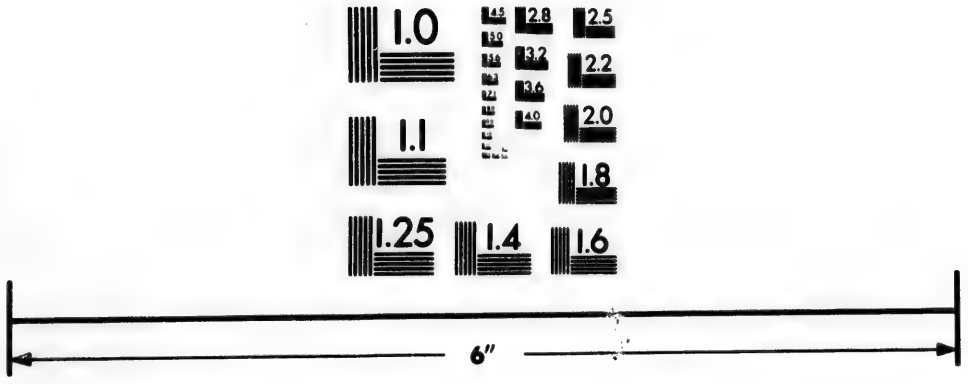

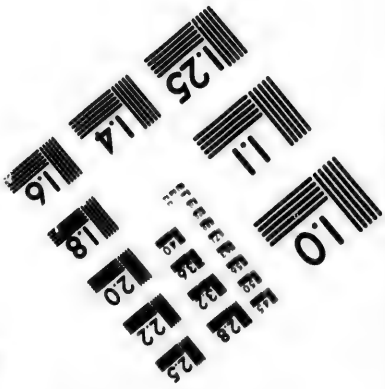

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repairs to the said part of the second part, executors, administrators, and assigns, and demand payment for the same, and if default is made to sue for the same in any court of law having jurisdiction over the same.

And the said part of the second part, executors, administrators, or assigns, shall not, nor will at any time or times during the continuance of this demise, sell, assign, let, or otherwise part with this present lease, or the said premises hereby demised, or any part thereof, to any person or persons whomsoever, for the whole or any part of the said term, nor alter, change, or remove any part of the said premises, yards, or offices, externally or internally, without the license and consent in writing of the said part of the first part, heirs, executors, administrators, or assigns, from time to time, first had and obtained.

And the said part of the first part, for , heirs, executors, administrators, and assigns, covenant with the said part of the second part, executors, administrators, and assigns, that , the said part of the second part, executors, administrators, and assigns, well and truly paying the rent hereinbefore reserved, and observing, performing, and keeping the covenants hereinbefore contained, shall and may, from time to time, and at all times during the said term, peaceably and quietly enjoy the said premises hereby demised, without molestation or hindrance.

In Witness Whereof, the said parties to these

presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of .

Lease of House.

ANOTHER FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, and , of the second part; WITNESSETH, that for and in consideration of the rents, covenants, and conditions in these presents contained and reserved, and which are hereby declared to be incumbent upon the said party of the second part, his executors, administrators, or assigns, to pay, do, and perform, he, the said party of the first part, hath demised, leased, set, and to farm let, and by these presents doth demise, lease, set, and to farm let, unto the said party of the second part, his executors and administrators, ALL that parcel or tract of land, &c. &c. TOGETHER with all buildings thereon erected and being, and all privileges and appurtenances whatsoever to the same premises belonging or in any way appertaining. TO HAVE AND TO HOLD the said parcel of land, with the appurtenances as aforesaid hereby demised, unto the said party of the second part, his executors, administrators, and assigns, from the day of , in the year one thousand eight hundred and , for and during and until the full end and term of from thence next ensuing, and fully to be complete and ended . Subject nevertheless to determina-

tion or cesser of the said term before the expiration thereof under the provisoes or conditions hereinafter mentioned, yielding and paying therefor yearly, and every year during the term hereby demised, unto the said party of the first part, his heirs, executors, administrators, and assigns, the yearly rent or sum of , of lawful current money of Canada, to be paid in manner following, that is to say, in each and every year during the said term, without any deduction or abatement thereout, for or by reason or on account of any cause or pretence whatsoever. And the said part of the second part do hereby, for , heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said part of the first part, heirs, executors, administrators, and assigns, in manner following, that is to say, that the said part of the second part, heirs, executors, administrators, and assigns, will well and truly pay, or cause to be paid, unto the said part of the first part, heirs, executors, administrators, or assigns, the said yearly sum or rent of of money as aforesaid, on or at the days and times and in the manner hereinbefore mentioned and prescribed for payment thereof. And also, that the said part of the second part, heirs, executors, administrators, or assigns, shall and will, at or their own costs and charges, well and sufficiently repair, and keep repaired, the now being, or hereafter during the said term to be, erected or situate upon the said premises, damage happening by accidental fire, tempest, or other inevitable accident being always excepted.

And further, that at the expiration or other legally premature determination of this lease, the said part of the second part, heirs, executors, administrators, or assigns, will and shall peaceably and quietly leave, surrender, and yield up unto the said party of the first part, his heirs, executors, administrators, or assigns, the whole of the said premises hereby demised, in such good and sufficient repair as aforesaid.

And also, that it shall and may be lawful to and for the said party of the first part, his heirs or assigns, after days' previous notice in writing, if required, times, or oftener, in every year during the said term, at seasonable hours of the day, to enter and come into and upon the said demised premises, or any part thereof, to view the condition of the same, and of all defects and wants of repair or amendment which may then and there be found to leave notice in writing at the said demised premises to and for the said part of the second part to repair and amend the same within a reasonable time, not exceeding months. And the said part of the second part do hereby, for , executors, administrators, and assigns, further covenant, promise, and agree, with and to the said part of the first part, his heirs and assigns, that , the said part of the second part, heirs, executors, administrators, and assigns, will and shall within the said space of months, next after every and any such notice being left as aforesaid, well and sufficiently repair and amend the same accordingly.

AND MOREOVER, that , the said part of the second part, heirs, executors, administrators, and assigns, shall not, nor will at any time during the said term, pull down, or make or permit to be made any alterations in any part of the said without the written consent of the said part of the first part, firstly had and obtained for such purpose. And moreover shall not, nor will at any time during the continuance of this demise, bargain, sell, assign, transfer, or set over this indenture of lease, or let, set, demise, underlet, or underlease the whole or any part of the said demised premises, or in any other manner part with this indenture of lease, or the possession or occupation of the whole or of any part or portion of the premises hereby demised, without such written consent and license as aforesaid. PROVIDED ALWAYS, NEVERTHELESS, and these presents are upon this express condition, that if the said rent or sum of hereby reserved, or any part thereof, shall be unpaid in part or in all for the space of next after either of the days on which the same ought to be paid, as aforesaid, having been lawfully demanded, or in case the said part of the second part, heirs, executors, administrators, or assigns, shall at any time during the said term of lease hereby granted, without such license as aforesaid, assign, transfer, or set over, underlease or underlet, the whole or any part of the premises hereby demised, or in any other manner part with the possession or occupation of the same, or any part thereof, or if all or any of the covenants, conditions, and agreements in these presents contained and prescribed as incumbent upon the said

part of the second part, heirs, executors, administrators, and assigns, to do, observe, keep, fulfil, or perform, shall not be done, observed, kept, fulfilled, or performed, according to the true intent and meaning of these presents, then and from thenceforth, in any or in either of the said cases, it shall and may be lawful to and for the said part of the first part, heirs, executors, administrators, and assigns, into and upon the said demised premises, or any part thereof in the name of the whole, wholly to re-enter, and the same to have again, retain, repossess, and enjoy, as in his and their first and former estate, and thereout and from thence the said part of the second part, heirs, executors, administrators, or assigns, and all or any occupier or occupiers of the said premises, or any part thereof, to expel, put out, and remove, this Indenture, or any matter or thing herein contained, to the contrary thereof in any wise notwithstanding. And the said part of the first part doth hereby, for heirs, executors, administrators, and assigns, covenant, promise, and agree, with and to the said part of the second part, heirs, executors, administrators, and assigns, that , the said part of the second part, heirs, executors, administrators, and assigns, well and truly paying or causing to be paid the said yearly rent hereby reserved, on the days and in the manner hereinbefore prescribed and appointed for payment thereof, and observing, keeping, and performing all and singular the covenants and agreements in these presents contained, and which on or their parts and behalves are and ought to be paid, kept, done, ful-

filled, and performed, shall and lawfully may, peaceably and quietly have, hold, use, occupy, possess, and enjoy the said demised premises, and every part and parcel thereof, with the appurtenances, during all the said term of hereby granted, without any lawful let, suit, trouble, interruption, eviction, molestation, hindrance, or denial of or by , the said , heirs or assigns, or of, from, or by any other person or persons claiming, or to claim, from, by, or under him, them, or any or either of them.

IN WITNESS, &c.

Lease of Land.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of , of the first part, and , of , of the second part, WITNESSETH, that in consideration of the rent, covenants, and agreements hereinafter reserved and contained, and to be paid, observed, and performed by the said part of the second part, executors, administrators, and assigns, , the said part of the first part, HA demised and leased, and by these presents DO demise and lease, unto the said part of the second part, executors, administrators, and assigns, ALL th certain parcel or tract of land and premises situate, lying, and being , TO HAVE AND TO HOLD the said parcel or tract of land, with the appurtenances, unto the said part of the second part, his executors, administrators, and assigns, from the day of , one thousand eight hundred and , for the term of from thence next

ensuing, and fully to be complete and ended, YIELDING AND PAYING therefor, unto the said part of the first part, executors, administrators, and assigns, the yearly rent or sum of , of lawful money of Canada, by equal payments, on the days of the months of in each and every year during the said term, the first payment to be made on the day of next ensuing the date hereof.

AND the said part of the second part do hereby, for , heirs, executors, administrators, and assigns, covenant, promise, and agree with and to the said part of the first part, heirs, executors, administrators, and assigns, that , the said part of the second part, executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, to the said part of the first part, executors, administrators, or assigns, the said yearly rent hereby reserved, at the times and in manner hereinbefore mentioned for payment thereof, without any deduction or abatement whatsoever thereout for or in respect of any rates, taxes, assessment, or otherwise: AND ALSO shall and will, on or before the day of now next, at own costs and charges, fence in the premises hereby demised in such manner as will effectually protect the land adjoining thereto.

AND IT IS HEREBY AGREED, on the part of the said part of the first part, heirs, executors, administrators, and assigns, that if at any time within the said term of the said part of the second part, heirs, executors, administrators, or assigns, shall desire to purchase the fee simple of the land hereby

demised, shall be allowed to do so by paying the sum of , of lawful money aforesaid, provided the said rent shall have been regularly paid up to the time when may so desire to purchase.

AND IT IS HEREBY AGREED, on the part of the said part of the second part, executors, administrators, and assigns, that if at any time or times during the said term, the said rent, or any part thereof, shall be in arrear and unpaid for the space of thirty days after any of the days or times whereon the same ought to be paid, as aforesaid, then it shall be lawful for the said part of the first part, heirs, executors, administrators, or assigns, to enter into and take possession of the premises hereby demised, whether the same be lawfully demanded or not, and the same to sell and dispose of, either by public auction or private sale, as to may seem best, without the let, hindrance, or denial of , the said part of the second part, heirs, executors, administrators, and assigns: AND FURTHER, that the non-fulfilment of the covenants hereinbefore mentioned, or any of them, on the part of the lessee or lessees, shall operate as a forfeiture of these presents, and the same shall be considered null and void to all intents and purposes whatsoever; AND ALSO, that the said part of the second part, executors, administrators, and assigns, shall not, nor will, during the said term, grant or demise, or assign, transfer, or set over, or otherwise, by any act or deed, procure or cause the said premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest therein, to be granted, assigned, transferred, or set over, unto any person or

persons whomsoever, nor carry on any offensive trade or business on the premises, without the consent in writing of the said part of the first part, heirs or assigns, first had and obtained.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of .

Lease of a House and Farm.

This Indenture, made the day of , in the year of our Lord 18 , Between A. B., of , yeoman, of the one part, and C. D., of , yeoman, of the other part, Witnesseth, that for and in consideration of the rent, covenants, conditions, and agreements hereinafter reserved and contained, and which, on the part and behalf of the said C. D., his executors, administrators, and assigns, are or ought to be paid, done, and performed, the said A. B. Hath demised, leased, set, and to farm let, and by these presents Doth demise, lease, set, and to farm let, unto the said C. D., his executors and administrators, All that parcel or tract of land, &c. [*describing the lot*], together with the frame dwelling-house, barns, stables, and other out-houses thereupon erected, standing, and being, together with all ways, paths, passages, waters, water-courses, privileges, advantages, and appurtenances whatsoever, to the same premises belonging or in any wise appertaining. To have and to hold the said parcel or tract of land, dwelling-house, buildings, and premises hereby demised unto the said

C. D., his executors, administrators, and assigns, from the day of the date of these presents, for, and during, and until the full end and term of years from thence next ensuing, and fully to be complete and ended, YIELDING AND PAYING therefor yearly, and every year during the said term hereby granted, unto the said A. B., his heirs and assigns, the yearly rent or sum of , of lawful current money of Canada (by two equal half-yearly payments, to be made on the day of , and the day of), in each and every year during the said term, without any deduction or abatement thereout for or upon any account or pretence whatsoever. PROVIDED ALWAYS, nevertheless, that if it shall happen that the said yearly rent hereby reserved, or any part thereof, shall be behind and unpaid for the space of twenty-one days next over or after either of the said days hereinbefore mentioned and appointed for payment of the same (being lawfully demanded) [or if the said C. D., his executors or administrators, shall assign over, underlet, or otherwise depart with this Indenture, or the premises hereby leased, or any part thereof], to any person or persons whomsoever, without the consent of the said A. B., his heirs or assigns, first had and obtained in writing, under his or their hands, for that purpose; then, and in either of the said cases, it shall and may be lawful to and for the said A. B., his heirs or assigns, into the said premises hereby demised, or any part thereof, in the name of the whole, to re-enter and the same to have again, retain, repossess, and enjoy, as in his and their first and former estate or estates, any thing herein con-

tained to the contrary thereof in any wise notwithstanding. And the said C. D. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said A. B., his heirs and assigns, in manner following (that is to say), that he, the said C. D., his executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, unto the said A. B., his heirs and assigns, the said yearly rent of , by equal half-yearly payments, on or at the days or times and in the manner hereinbefore mentioned and appointed for payment thereof. And also that he, the said C. D., his executors, administrators, and assigns, shall and will, at his and their own costs and charges, well and sufficiently repair and keep repaired the dwelling-house, buildings, fences, and gates now erected, or which shall at any time or times hereafter during the said term be erected, upon the said demised premises, he, the said A. B., his heirs and assigns, upon request and notice to them made, finding and allowing on the said premises, or within miles' distance thereof, all rough timber, brick, lime, tiles, and all other materials whatsoever (except straw), for doing thereof, to be carried to the said hereby demised premises at the charge of the said C. D., his executors, administrators, or assigns, or otherwise permitting and allowing him or them, at their like costs and charges, to cut and fell such and so many timber-trees upon some part of the premises hereby demised as shall be requisite and necessary for the purpose (damage happening by accidental fire, tempest, or other inevitable accident being always ex-

cepted): And further, that he, the said C. D., his executors, administrators, and assigns, shall and will at all times during the said term cultivate and farm such part or parts of the said lands and premises as now are or shall hereafter be brought into cultivation during the said term in a proper husbandlike manner. And shall and will at the expiration or other sooner determination of this lease peaceably and quietly leave, surrender, and yield up unto the said A. B., his heirs and assigns, the whole of the said premises hereby demised in such good and sufficient repair as aforesaid (reasonable use and wear thereof, and damage by accidental fire, tempest, or other inevitable accident, as aforesaid, always excepted); And also, that it shall and may be lawful to and for the said A. B., his heirs and assigns, after six days' previous notice in writing, twice or oftener in every year during the said term, at seasonable and convenient times in the day, to enter and come into and upon the said demised premises, or any part thereof, to view the condition of the same, and of all defects and wants of reparation and amendment which shall then and there be found to leave notice in writing at the said demised premises to or for the said C. D., his executors, administrators, or assigns, to repair and amend the same within the space of three calendar months. And the said C. D. doth hereby, for himself, his executors, administrators, and assigns, covenant, promise, and agree to and with the said A. B., his heirs and assigns, that he, the said C. D., his executors, administrators, or assigns, shall and will, within three calendar months next after every and

any such notice shall have been so given or left as aforesaid, well and sufficiently repair and amend the same accordingly (except as before excepted, and upon being provided or allowed materials for the same, as aforesaid), and also that he, the said C. D., his executors, administrators, or assigns, shall not, nor will at any time during the said term, pull down, or cause or permit to be pulled down, or make, or cause or permit to be made, any alteration by cutting new door-ways or otherwise in the said dwelling-house, or in any of the buildings upon the said demised premises, without the consent in writing of the said A. B., his heirs or assigns, for that purpose first had and obtained; AND moreover shall not, nor will at any time during the continuance of this demise, bargain, sell, assign, transfer, or set over this Indenture of Lease, or let, set, demise, underlease, or underlet the said dwelling-house and premises hereby demised, or any part thereof, or in any other manner part with this Indenture of Lease, or the possession or occupation of the premises hereby demised, without such license and consent as aforesaid. PROVIDED ALWAYS, nevertheless, and these presents are upon this express condition, that if the said yearly rent or sum of , hereby reserved, or any part thereof, shall be unpaid in part or in all by the space of twenty-one days next after either of the days on which the same ought to be paid as aforesaid, being lawfully demanded; or in case the said C. D., his executors or administrators, shall at any time during the said term hereby granted, without such license as aforesaid, assign, transfer, or set over, underlease or underlet, the premises hereby

demised, or any part thereof, or in any other manner part with the possession or occupation of the same, or any part thereof; or if all or any of the covenants, conditions, or agreements in these presents contained, on the part and behalf of the said C. D., his executors, administrators, and assigns, shall not be performed, fulfilled, and kept according to the true intent and meaning of these presents, then and from thenceforth, in any or either of the said cases, it shall and may be lawful to and for the said A. B., his heirs and assigns, into and upon the said demised premises, or any part thereof, in the name of the whole wholly to re-enter and the same to have again, retain, repossess, and enjoy as in his or their first and former estate, and thereout and from thence the said C. D., his executors, administrators, and assigns, and all other occupiers of the said premises, to expel, put out, and amove, this indenture or any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. And the said A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, that he, the said C. D., his executors, administrators, and assigns, well and truly paying the said yearly rent hereby reserved on the days and in the manner hereinbefore appointed for payment thereof, and observing, keeping, and performing all and singular the covenants and agreements in these presents contained, and which, on his and their parts and behalves, are and ought to be paid, kept, done, and performed, shall and lawfully

may peaceably and quietly have, hold, use, occupy, possess, and enjoy the said demised premises, and every part and parcel thereof, with the appurtenances, during all the said term of years hereby granted, without any lawful let, suit, trouble, interruption, eviction, molestation, hindrance, or denial of or by him, the said A. B., his heirs or assigns, or of, from, or by any other person or persons claiming or to claim from, by, or under him, them, or any or either of them.

IN WITNESS, &c.

Indenture of Lease.

SHORT FORM UNDER STATUTE.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , in pursuance of the act to facilitate the leasing of lands and tenements, BETWEEN , of the first part, and , of the second part; WITNESSETH, that in consideration of the yearly rents, covenants, and conditions hereinafter respectively reserved and contained by the said lessee, executors, administrators, and assigns, to be respectively paid, observed, and performed, the said lessor HA demised and leased, and by these presents DO demise and lease, unto the said lessee ALL TH certain parcel or tract of land and premises situate, lying, and being in the , TOGETHER with all the rights, members, and appurtenances whatsoever to the said premises belonging or appertaining: TO HAVE AND TO HOLD the said hereby demised premises.

with their appurtenances, unto the said lessee, executors, administrators, and assigns, for the term of , to be computed from the day of , one thousand eight hundred and . YIELDING AND PAYING therefor unto the said lessor, heirs or assigns, the clear yearly rent or sum of , of lawful money of Canada, in even portions, on the days of in each and every year during the continuance of the said term, without any deduction, defalcation, or abatement whatsoever—the first payment to be made on the day of ; AND the said lessee, for heirs, executors, administrators, and assigns, hereby covenants with the said lessor, heirs and assigns, to pay rent, and to pay taxes and to repair; AND to keep up fences, and not to cut down timber; AND that the said lessor may enter and view state of repair; AND that the said lessee will repair according to notice; AND will not assign or sub-let without leave; AND will not carry on any business that shall be deemed a nuisance on the said premises; AND that will leave the premises in good repair; AND also, that if the term hereby granted shall be at any time seized or taken in execution or in attachment by any creditor of the said lessee, or if the said lessee shall make any assignment for the benefit of creditors, or, becoming bankrupt or insolvent, shall take the benefit of any act that may be in force for bankrupt or insolvent debtors, the then current quarter's rent shall immediately become due and payable, and the said term shall immediately become forfeit and void, but the next current quarter's rent shall nevertheless be at once due

and payable. PROVISO for re-entry by the said lessor on non-payment of rent, or on non-performance of covenants, or seizure or forfeiture of the said term for any of the causes aforesaid. The said lessor covenants with the said lessee for quiet enjoyment.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals.

Signed, sealed, and delivered in the presence of .

Statutory Lease.

ANOTHER FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , in pursuance of the act to facilitate the leasing of lands and tenements, BETWEEN [lessor], of the first part, and [lessee], of the second part: WITNESSETH, that in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the said lessee, executors, administrators, and assigns, to be paid, kept, and performed, , the said lessor, ha demised and leased, and by these presents do demise and lease, unto the said lessee, executors, administrators, and assigns, ALL TH TOGETHER with the appurtenances: TO HAVE AND TO HOLD the same unto the said lessee, executors, administrators, and assigns, from the day of , one thousand eight hundred and , for and during and unto the full end and term of from thence next ensuing, and fully to be complete and ended; YIELDING AND PAYING therefor unto the said lessor,

heirs, executors, administrators, or assigns, the clear yearly rent or sum of , of lawful money of Canada , in each and every year during the said term, without any deduction whatsoever—the first payment to be made on the day of next ensuing the date hereof.

And the said lessee covenant with the said lessor to pay rent, and to pay taxes, and to repair, and to keep up fences, and not to cut down timber, and that the said lessor may enter and view state of repair; and that the said lessee will repair according to notice; and will not assign or sub-let without leave; and that will leave the premises in good repair; and will not carry on any business that shall be deemed a nuisance on said premises. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.

The said lessor covenant with the said lessee for quiet enjoyment.

In Witness Whereof, the said parties have hereto set their hands and seals.

Signed, sealed, and delivered in the presence of .

Lease of Part of a House.

Memorandum of an agreement made and entered into the day of , 18 , by and between A. B., of , and C. D., of, &c., whereby the said A. B. agrees to let, and the said C. D agrees to take the rooms or apartments following, that is to say, , being part of a house and premises in which the said A. B. now resides,

situate and being No. , in Street, in the city of , To HAVE AND TO HOLD the said rooms and apartments for and during the term of half a year, to commence from the day of , instant, at and for the yearly rent of , lawful money of Canada, payable monthly, by even and equal portions, the first payment to be made on the day of next ensuing the date hereof; and it is further agreed that, at the expiration of the said term of half a year, the said C. D. may hold, occupy, and enjoy the said rooms or apartments, from month to month, for so long a time as the said C. D. and A. B. shall agree, at the rent above specified; and that each party be at liberty to quit possession on giving the other a month's notice in writing. And it is also further agreed that, when the said C. D. shall quit the premises, he shall leave them in as good condition and repair as they shall be in on his taking possession thereof, reasonable wear excepted.

IN WITNESS, &c.

Notice to Quit, by Landlord.

To A. B., Esq.

I hereby give you notice to quit and deliver up, on or before the day of , 18 , the peaceable and quiet possession of the premises you now hold of me, with the appurtenances, situate at , in the township of , in the county of , in this province.

DATED this day of , A. D. 18 .

Yours, &c.

WITNESS: E. F. C. D.

Notice to Quit, by Tenant.

To C. D., Esq.

I hereby give you notice that it is my intention to quit and deliver up to you, on or before the day of , 18 , the peaceable and quiet possession of the premises now held by me, with the appurtenances, situate at , in the township of , in the county of , in this province.

DATED this day of , A. D. 18 .

Yours, &c.

A. B.

WITNESS: E. F.

CHAPTER XIII.

Of Master and Servant.

THE relation of Master and Servant is so extensive, entering into all the walks of life, that this work would be incomplete without a chapter devoted to the subject.

In order to constitute a contract of hiring and service, the contract creating the relation of master and servant, there must be either an *express* or an *implied* mutual engagement, binding one party to employ and remunerate, and the other to serve, for some determinate term or period. If the employer merely agrees to pay so long as the servant continues to

serve, leaving it optional either with the servant to serve or with the employer to employ, there is no contract of hiring and service; but if the servant binds himself to serve for some determinate term, and the employer, expressly or impliedly, agrees or promises to retain the servant in his service for the term, there is a contract of hiring and service.

A contract of hiring and service need not be authenticated by writing unless the hiring exceeds a year in duration. The Master and Servant Act (Cons. St. U. C., cap. 75, s. 3) provides that "a verbal agreement shall not exceed the term of one year." In the absence of an express contract between the parties, a hiring may be presumed from the mere fact of the service, unless the service has been with near relations. If a man, for example, serves a stranger in the capacity of a clerk, or of a domestic servant, or farm-servant, for a continued period, the law presumes that the service has been rendered in fulfilment of a contract of hiring and service; and if the party has served without any thing being said as to wages, the law presumes that the parties agreed for customary and reasonable wages. But if the service has been with the parent or uncle, or other near relation, of the party serving, a hiring cannot be implied or presumed from it, but an express hiring must be proved in order to support a claim for wages; for the law regards services rendered by near relations to one another as gratuitous acts of kindness and charity, and does not presume that they are to be paid for unless there is an express agreement to that effect.

When the employment of a servant is of a permanent nature, and annual wages are to be paid, the hiring is in all cases a yearly hiring; and when the servant is not a household or domestic servant, the hiring cannot be put an end to by either party, without the consent of the other, before the termination of the current year. A general hiring of household or domestic servants, where no time is mentioned for the duration of the service, is a hiring for a year, and so on from year to year, determinable by custom and usage, at the option of either of the parties, on giving a month's warning or tendering a month's wages. When wages are to be paid weekly, and there is nothing in the original contract importing a different agreement, the hiring is a weekly hiring, and may be terminated by a week's warning or a week's wages.

It is the first duty of the master, after the contract of hiring and service has been entered into, to take the servant into his employ, and enable him to earn the hire or reward agreed to be paid, and if he neglects so to do, he renders himself liable forthwith to an action for a breach of contract. Every servant, on the other hand, impliedly undertakes to obey the just and reasonable commands of the master, and to be careful, diligent, and industrious in the performance of the work intrusted to him to execute. He is not bound to fulfil the unjust and unreasonable commands of a hard taskmaster, nor to perform work and services not fairly coming within the scope of his employment.

If a servant wilfully disobeys or habitually neglects

the just and reasonable orders of the master, if he absents himself repeatedly from the service, or refuses to perform his work or to submit to the domestic regulations of the house, or is guilty of gross moral misconduct, the contract may be dissolved by the master, and the servant dismissed.

If a household servant hired for a year or any portion of a year is hurt or disabled, or falls sick, whilst doing his master's business, the master is not entitled to make any deduction from the agreed wages for the time that the servant was incapacitated for the performance of his ordinary work. And if after having taken the servant in his service he improperly dismisses him, or prevents him by a continued system of persecution from continuing in his service, he is bound to make compensation to the servant for all the damages sustained by the latter; for the law implies, from a person who contracts to pay a salary for services for a certain term, a contract to permit those services to be performed.

When the employer exercises some trade, craft, or mystery, and it is made part of the agreement that he shall teach as well as employ, and remunerate the servant for some specific period in return for the service rendered, the contract amounts to an *apprenticeship*. Contracts of apprenticeship, being usually for more than one year, require to be in writing. An indenture of apprenticeship is sufficiently executed by the apprentice desiring a bystander to write his name opposite the seal, and by his then taking the deed and delivering it to his master.

As the contract of apprenticeship is invariably

created by deed, the liabilities resulting therefrom will depend upon the terms and covenants of the particular contract. The apprentice and his father, or some one or more of his relations or friends, usually covenant that he shall faithfully serve the master during the term of the apprenticeship, keep his secrets, obey his lawful commands, and preserve and protect his property, and, generally, that he shall behave himself in all things as a faithful apprentice.

The master usually covenants to take the apprentice into his service and teach him the art or trade he himself exercises or carries on; to find him in meat, drink, and lodging, and sometimes with wearing-apparel, washing, and all other necessaries, during the term. The sickness of the apprentice, or his incapacity to serve and to learn by reason of ill health, or an accident, does not discharge the master from his covenant to provide for him and to maintain him, inasmuch as the latter takes him for better and for worse, and must minister to his necessities in sickness as well as in health.

Voluntary contracts of service or indentures entered into by any parties within Upper Canada are not binding for a longer period than nine years from the day of the date of the contract.

There are two acts of Parliament bearing particularly upon the subject of this chapter,—the "Master and Servant Act," Cons. St. U. C., cap. 75, and the "Act respecting Apprentices and Minors," Cons. St. U. C., cap. 76.

The former of these acts provides that if after any engagement has been entered into, and during

the period of such engagement, the servant refuses to go to work, or without permission or discharge leaves the employ of the master, or refuses to obey his lawful commands, or neglects the service or injures the property of the master, the offender, on complaint of the master, shall be liable to the punishment provided by the act; and that if any tavern or boarding-house keeper, or other person, induces or persuades any servants or laborers to confederate for demanding extravagant or high wages, and prevents their hiring, then, on due proof of offence, such tavern-keeper shall forfeit his license, in addition to any fine, and be subject to fine or imprisonment.

The penalty for contravention of the foregoing provisions is a fine not exceeding twenty dollars, or imprisonment not exceeding one month nor less than one day.

If a master refuses to pay his servant's wages, or ill uses him, or refuses to provide necessary food, the servant may apply to a justice of the peace, who may discharge the servant from the employ of such master and may order payment of any wages found due, not exceeding forty dollars.

Any person who thinks himself aggrieved by any such conviction, or order for payment of wages, may appeal to the Quarter Sessions against such conviction or order.

The act respecting apprentices and minors provides that where a minor (that is, a person under twenty-one years of age) over the age of sixteen, who has no parent or legal guardian, or who does not reside with such parent or guardian, enters into an

engagement, written or verbal, to perform any service or work, such minor shall be liable upon the same, and shall have the benefit thereof in the same manner as if of legal age.

A parent or other person having the care or charge of a minor not under the age of fourteen years may, with consent of the minor, put and bind him as an apprentice, by indenture, to any master-mechanic, farmer, or other person carrying on a trade or calling, until such minor attains twenty-one.

When the father of an infant child abandons and leaves the child with the mother, the mother, with the approbation of two justices of the peace, may bind the child as an apprentice until the child attains twenty-one if a male, or eighteen if a female. The mother and the justices must sign the indenture. No child fourteen years old or upwards is to be so apprenticed without his or her consent.

The mayor, recorder, or police magistrate of any city or town, and in a county the chairman of and at the Quarter Sessions, may apprentice orphan children, and children who have been deserted by their parents, or whose parents have been committed to gaol.

If the master of an apprentice dies, the apprentice, by operation of law, and without any new writings, becomes transferred to the person (if any) who continues the master's business.

A master may transfer his apprentice to any person who is competent to receive or take an apprentice, and who carries on the same kind of business.

Every master must provide to his apprentice suit-

able board, lodging, and clothing, or such equivalent therefor as is mentioned in the indenture, and must also properly teach and instruct him, or cause him to be taught and instructed, in his trade or calling.

Every apprentice must faithfully serve his master, obey all his lawful commands, and not absent himself from his service, day or night, without consent.

A master convicted before any justice, mayor, or police magistrate, on the complaint of the apprentice, of any ill usage, cruelty, or refusal of necessary provisions, is liable to a fine not exceeding twenty dollars and costs, and to imprisonment in default for a term not exceeding one month.

An apprentice convicted of refusal to obey lawful commands, or of waste or damage to property, or of any other improper conduct, may be imprisoned for a term not exceeding one month.

An apprentice absenting himself before the time of service expires may be compelled to make good the loss by longer service or pecuniary satisfaction, and if he refuses or neglects to do so may be committed to gaol for a term not exceeding three months; but the master must proceed to enforce such service or satisfaction within three years after the expiration of the term for which the apprentice contracted to serve.

Persons harboring or employing an absconding apprentice are liable to pay the master the full value of the apprentice's labor.

The apprenticeship indentures may be cancelled if the apprentice become insane, or be convicted of

felony, or be sentenced to the provincial penitentiary, or abscond. The master must, within one month, give notice in writing to the other parties to the indenture of his intention to cancel the indentures, which notice must be served on the parties, or published in the gazette or in a local county or city newspaper.

Masters or apprentices may appeal to the Quarter Sessions against any magistrate's decision.

Apprenticeship Indenture.

THIS INDENTURE, made the day of , 18 , BETWEEN William Jones, of the town of Stratford, in the county of Perth and Province of Canada, Esquire, of the first part, Henry Jones, his son, now of the age of fifteen years, of the second part, and Thomas McIntosh, of the same place, printer, of the third part, WITNESSETH, That the said William Jones, with the consent of his said son Henry Jones (a minor now of the age of fifteen years or thereabouts), testified by his being a party to and executing these presents, doth hereby put, place, bind, and indent him, the said Henry Jones, to the said Thomas McIntosh, to learn the art and trade of a printer, and with him, the said Thomas McIntosh, his executors, administrators, and assigns, after the manner of an apprentice to dwell and serve from the day of the date hereof until the day of , 18 , being a period of years, when the said minor will arrive at the age of twenty-one years.

And the said William Jones doth hereby, for himself, his heirs, executors, and administrators, cove-

nant, promise, and agree to and with the said Thomas McIntosh, his executors, administrators, and assigns, that during the said term of years the said Henry Jones shall well and faithfully serve the said Thomas McIntosh, his secrets keep and lawful commands at all times obey, and shall give and devote to him his whole time and labor; that he shall not marry during said term, nor use ardent spirits, nor practice gaming or any other unlawful sports, nor waste, injure, or destroy the property of his master, but conduct himself in a sober, temperate, honest manner, and as a good and faithful apprentice ought to do, during all the time aforesaid.

And the said Thomas McIntosh, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said William Jones, his executors and administrators, that he, the said Thomas McIntosh, his executors and administrators, shall and will teach and instruct, or cause to be taught and instructed, the said Henry Jones in the art, trade, and mystery of a Printer, and shall and will find and provide for the said apprentice sufficient meat, drink, apparel, washing, and lodging during the said term; and at the expiration thereof shall and will give his said apprentice two suits of apparel (*any other special terms may be here inserted*); and the said Thomas McIntosh further agrees to pay to the said William Jones, father of the said Henry Jones, the following sums of money, to wit: for the first year's service, twenty-five dollars; for the second year's service, seventy-five dollars; and for each and every subsequent year,

until the completion of his term, one hundred dollars; which said payments are to be made on the first day of May in each year.

And for the true performance of all and singular the covenants and agreements hereinbefore contained, the said parties bind themselves each unto the other, jointly by these presents.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

William Jones. [L. S.]
Henry Jones. [L. S.]
Thomas McIntosh. [L. S.]

Signed and sealed in the presence of
Robert Johnson.

Indenture of Apprenticeship for a Girl to learn Housework, etc.

This Indenture, made the day of , 18 , Between Mary Flannigan, of the township of Elma, in the county of Perth, Widow, of the first part, Sarah Flannigan, her daughter, now of the age of fifteen years, of the second part, and Robert Halifax, of the same township, Farmer, of the third part, Witnesseth that the said Sarah Flannigan, by and with the consent of the said Mary Flannigan her mother, testified by her execution of these presents, hath bound and put herself, and by these presents doth bind and put herself, apprentice to the said Robert Halifax, with him to dwell and serve from the day of the date hereof until the full end of the term of six years next ensuing, fully to be com-

pleted and ended; during which term the said Sarah Flannigan her said master faithfully shall and will serve in all lawful business, according to her power and ability, and honestly and obediently in all things demean and behave herself toward her said master during the term aforesaid.

And the said Robert Halifax shall and will teach and instruct, or cause to be taught and instructed, the said apprentice in sewing, knitting, and housewifery, the management of the dairy, and all matters connected with the calling of a farmer, properly to be taught to her the said apprentice, together with reading, writing, and the other usual branches of a common school education; and shall and will during the said term find, provide, and allow her sufficient meat, drink, clothing, lodging, washing, and all other necessaries; and at the expiration of the term aforesaid shall and will give unto the said apprentice two suits of apparel.

In Witness, &c. (*Conclude as in last form*).

Mary Flannigan. [L. S.]
Sarah Flannigan. [L. S.]
Robert Halifax. [L. S.]

Signed, &c.,
Thomas Jones.

Assignment of an Indenture of Apprenticeship.

Know all Men by these Presents, that I, the within named Thomas McIntosh, by and with the consent of Henry Jones, my within named apprentice, and William Jones, his father (*or as the case may be*), parties to the within Indenture, testified by their

signing and sealing these presents, for divers good causes and considerations have assigned and set over, and do hereby assign and set over, the within Indenture, and the said Henry Jones, the apprentice within named, unto Joseph Thomson, of the City of London, Canada West, Printer, his executors, administrators, or assigns, for the residue of the within mentioned term, he and they performing all and singular the covenants therein contained on my part to be kept and performed.

And I, the said Henry Jones, do hereby covenant on my part, with the consent of my father, the said William Jones, faithfully to serve the said Joseph Thomson as an apprentice for the residue of the term within mentioned, and to perform toward him all and singular the covenants within mentioned on my part to be kept and performed.

And I, the said Joseph Thomson, for myself, my executors, administrators, and assigns, do hereby covenant to perform all and singular the covenants within mentioned on the part of the said Thomas McIntosh to be kept and performed toward the said apprentice.

Witness our hands and seals this day of , 18 .

Thomas McIntosh. [L. S.]
Henry Jones. [L. S.]
William Jones. [L. S.]
Joseph Thomson. [L. S.]

Signed, sealed, &c.,
James Smith.

CHAPTER XIV.

Of Mortgages.

A MORTGAGE is a contract whereby a debtor grants or conveys some estate or interest in land, or transfers certain goods and chattels, to his creditor, subject to a proviso that, if the debt is discharged by a day named, the grant or transfer shall be void, and the debtor shall be entitled to repossess himself of his lands or of his goods and chattels, and hold and enjoy them as if the grant or transfer had never been made. The debtor who makes the grant or transfer is called the *Mortgagor*, and the creditor to whom it is made, the *Mortgagee*. By a contract of this description the right of property in the thing mortgaged passes to the creditor, subject to be divested by the payment of the debt at the appointed time. If the debt be then paid, the property revests in the mortgagor without any conveyance; but if not paid the property, at law, becomes the absolute property of the mortgagee, and he may proceed to take possession of it. The Court of Chancery will, however, give the mortgagor liberty to redeem at any time within twenty years, on payment of what is due for principal and interest. When the debt is paid after the appointed day, a reconveyance becomes necessary to revest the property in the mortgagor. The ordinary mortgage discharge operates as a reconveyance,

and is sufficient, without any more formal instrument, to restore the title to the mortgagor.

It will not be expected that we should enter very deeply into the law of mortgages: the subject is much too voluminous and intricate to be discussed at large.

Mortgages require to be in writing, and must be by deed under seal. The mode of executing a mortgage is the same as that of any other deed; and they require to be registered in the County Registry Office.

There are several ways of enforcing payment of a mortgage. The mortgagee may bring an action at law, or he may foreclose or sell in chancery, or he may proceed to sell, without any suit or action, where the mortgage contains a power of sale.

Sometimes, though rarely now, instead of taking a mortgage deed, the creditor takes an absolute conveyance and gives back a bond to reconvey. The Court of Chancery looks upon such a transaction in the same light as a mortgage, and, notwithstanding the money may not be paid at the time named in the bond, will order the creditor to reconvey the land on payment of principal and interest any time within twenty years.

The wife should be made a party to the mortgage, in the same way as to a deed, in order to bar her dower in the lands.

A mortgage may be made of a lease as well as of any other property. We have already given the form of a Chattel Mortgage: the following forms will make the list complete for all ordinary purposes.

Mortgage in Fee of Real Estate.

THIS INDENTURE, made the day of ,

in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part, WITNESSETH, that the said party of the first part, for and in consideration of the sum of , of lawful money of Canada, to him by the said party of the third part in hand well and truly paid (the receipt whereof is hereby acknowledged), HATH granted, bargained, sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, enfeoff, convey, and confirm, unto the said party of the third part, heirs and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the of , in the County of , of the Province of Canada, being composed of , TOGETHER with all and singular the houses, out-houses, buildings, woods, ways, water-courses, easements, profits, privileges, emoluments, hereditaments, and appurtenances whatsoever to the said parcel or tract of land, tenements, hereditaments, and premises belonging, or in any wise appertaining, or therewith used and enjoyed, or known or taken as a part or parcel thereof, or any part thereof, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and every part and parcel thereof, and all the estate, right, title, interest, use, trust, claim, property, and demand, both at law and in equity, of him, the said party of the first part, of, in, to, or out of the same, and every part and parcel thereof. To

HAVE AND TO HOLD the said lands, tenements, hereditaments, and premises, and all and singular other the premises hereby conveyed or mentioned, or intended so to be, with their and every of their appurtenances, unto the said party of the third part, heirs and assigns, to the sole and only use of the said party of the third part, heirs and assigns, forever, Subject nevertheless to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown; AND THIS INDENTURE FURTHER WITNESSETH, that the said party of the second part, with the privity and consent of her said husband, testified by his execution hereof, in consideration of the premises, and also in consideration of the further sum of five shillings, of lawful money of Canada aforesaid, to her by the said party of the third part in hand well and truly paid (the receipt whereof is hereby acknowledged), hath remised, released, and forever relinquished and quitted claim, and by these presents doth remise, release, and forever relinquish and quit claim, unto the said party of the third part, heirs, executors, administrators, and assigns, all dower, and all right and title thereto, which she, the said party of the second part, now hath, or, in the event of surviving her said husband, can or may or could or might hereafter in any wise have or claim, whether at common law or otherwise howsoever, of, in, to, or out of the lands, tenements, hereditaments, and premises hereby conveyed, or hereinbefore mentioned or intended so to be conveyed, with the appurtenances, or of, in, to, or out of the same, or any part thereof: PROVIDED ALWAYS,

and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators, or any of them, do and shall well and truly pay, or cause to be paid, unto the said party of the third part, executors, administrators, or assigns, the just and full sum of , of lawful money of Canada, with interest thereon at the rate of per cent. per annum, on the day and time and in manner following, that is to say: without any deduction or abatement out of the same for or in respect of any taxes, rates, levies, charges, rents, assessments, statute-labor, or other impositions whatsoever, already rated, charged, assessed, or imposed, or hereafter to be rated, charged, assessed, or imposed, by authority of Parliament or otherwise howsoever, on the said lands, tenements, hereditaments, and premises, with their appurtenances, or on the said party of the third part, in respect of said premises or of said money, or for or in respect of any other matter or thing whatsoever; and, moreover, until default shall happen to be made of or in the payment of the said sum of money in this proviso mentioned, or of or in the interest thereof, do and shall well and truly pay, do, and perform, or cause or procure to be paid, done, and performed, all the taxes, rates, levies, charges, rents, assessments, statute-labor, and other impositions aforesaid; THEN, from and immediately after such payment, so made as aforesaid, and the observance, performance, and fulfilment of all and every of the provisions, agreements, and stipulations in this proviso particularly set forth, these presents, and every clause, covenant,

matter, and thing herein contained, shall be absolutely null and void to all intents and purposes whatsoever, as if the same had never been made: AND the said party of the first part doth hereby, for himself, his heirs, executors, and administrators, COVENANT, PROMISE, AND AGREE to and with the said party of the third part, heirs and assigns, in manner following, that is to say: THAT he, the said party of the first part, his heirs, executors, or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said party of the third part, heirs, executors, administrators, or assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, at the day and time and in manner above limited for payment thereof, and shall and will in every thing well, faithfully, and truly do, observe, perform, fulfil, and keep all and singular the provisions, agreements, and stipulations in the said above proviso particularly set forth, according to the true intent and meaning of these presents and of the said above proviso: AND ALSO, THAT he, the said party of the first part, at the time of the ensealing and delivery hereof, is and stands solely, rightfully, and lawfully seised of a good, sure, perfect, absolute, and indefeasible estate of inheritance, in fee simple, of and in the lands, tenements, hereditaments, and all and singular other the premises hereinbefore described, with their and every of their appurtenances, and of and in every part and parcel thereof, without any manner of trust, reservations, limitations, provisoes, or conditions, or any other matter or thing, to

alter, charge, change, encumber, or defeat the same: AND ALSO, THAT he, the said party of the first part, now hath in himself good right, full power, and lawful and absolute authority, to alien, convey, and dispose of the said lands, tenements, hereditaments, and premises, and every part and parcel thereof, with the appurtenances, unto the said party of the third part, heirs and assigns, in manner and form aforesaid: AND ALSO, THAT from and after default shall happen to be made of or in the payment of the said sum of money in the said above proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling, or keeping some one or more of the provisions, agreements, or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then and in every such case it shall and may be lawful to and for the said party of the third part, heirs and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess, and enjoy the aforesaid lands, tenements, hereditaments, and premises hereby conveyed, or intended so to be, with the appurtenances, without the let, suit, hindrance, interruption, or denial of him, the said party of the first part, his heirs or assigns, or any other person or persons whomsoever, and that free and clear, and freely and clearly acquitted, exonerated, and discharged of and from all arrears of taxes and assessments whatsoever, due or payable upon or in respect of the said lands, tenements, hereditaments, and premises, or any part thereof, and of and from all former

conveyances, mortgages, rights, annuities, debts, judgments, executions, and recognizances, and of and from all manner of other charges or incumbrances whatsoever: AND ALSO, that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling, or keeping some one or more of the provisions, agreements, or stipulations in the said proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, he, the said party of the first part, his heirs and assigns, and all and every other person or persons whomsoever having or lawfully claiming, or who shall or may have or lawfully claim, any estate, right, title, interest, or trust of, in, to, or out of the lands, tenements, hereditaments, or premises hereby conveyed, as aforesaid, or intended so to be, with their appurtenances, or any part thereof, by, from, under, or in trust for him, the said party of the first part, shall and will from time to time and at all times thereafter, at the proper costs and charges in the law of the said party of the third part, heirs and assigns, make, do, suffer, and execute, or cause or procure to be made, done, suffered, and executed, all and every such further and other reasonable act and acts, deed and deeds, devices, conveyances, and assurances in the law, for the further, better, and more perfectly and absolutely conveying and assuring of the said lands, tenements, hereditaments, and premises, with the appurtenances, unto the said party of the third part, heirs and assigns,

as by the said party of the third part, heirs and assigns, or , or their counsel learned in the law, shall be lawfully and reasonably devised, advised, or required: And lastly, it is hereby declared and agreed, by and between the said parties to these presents, that until default shall happen to be made of or in the payment of the said sum of money in the above proviso mentioned, or of or in the interest thereof, or of or in the doing, observing, performing, fulfilling, or keeping some one or more of the provisions, agreements, or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of the said above proviso, it shall and may be lawful to and for the said party of the first part, his heirs and assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said lands, tenements, hereditaments, and premises, and every part thereof, with the appurtenances above mentioned to be hereby conveyed, as aforesaid, and receive and take the rents, issues, and profits thereof, to his and their own use and benefit, without the let, suit, hindrance, interruption, or denial of or by the said party of the third part, heirs, executors, administrators, or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall or may lawfully claim, by, from, or under , them, or any or either of them.

In Witness Whereof, the parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of . }

RECEIVED, on the day of the date of this Indenture, the sum of , of lawful money of Canada, being the full consideration therein mentioned.

Mortgage in Fee.

SHORTER FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part, WITNESSETH, that the said party of the first part, in consideration of the sum of , of lawful money of Canada, to him by the said part of the third part in hand paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), DOTH grant, bargain, sell, release, convey, and confirm unto the said part of the third part, heirs and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being .

TOGETHER with the appurtenances, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, use, trust, claim, property, and demand, both at law and in equity, of him, the said party of the first part, of, in, to, or out of the same.

TO HAVE AND TO HOLD the said lands, tenements, hereditaments, and premises, and all and singular other the premises hereby conveyed, or intended so to be, with the appurtenances, unto the said part

of the third part, heirs and assigns, to the sole and only use of the said part of the third part, heirs and assigns, forever. Subject to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown.

And this Indenture further witnesseth, that the said party of the second part, wife of the said party of the first part, with the privity and consent of her said husband, testified by his being a party to and executing these presents, in consideration of the premises and of the sum of five shillings to her paid by the said part of the third part, the receipt whereof is hereby acknowledged, Doth hereby remise, release, and forever relinquish and quit claim unto the said part of the third part, heirs, executors, administrators, and assigns, all dower and all right and title thereto which she, the said party of the second part, now hath or in the event of surviving her said husband can or may hereafter have or claim, whether at common law or otherwise, of, in, to, or out of the said lands, tenements, hereditaments, and premises, or any part thereof.

Provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators, or assigns, or some or one of them, do and shall well and truly pay, or cause to be paid, unto the said part of the third part, executors, administrators, or assigns, the said sum of , with interest thereon, at per cent. per annum, at the times and in manner following, that is to say: without making any deduction, defalcation, or abatement thereout in respect of any taxes, assessments, or

otherwise, now or hereafter to be assessed or imposed on the said lands, tenements, hereditaments, and premises, or any part thereof, by authority of Parliament or otherwise howsoever, then and from thenceforth this Indenture, and every clause, matter, and thing herein contained, shall absolutely cease, determine, and be void to all intents and purposes whatsoever, as if the same had never been made.

And the said party of the first part doth hereby, for himself, his heirs, executors, administrators, and assigns, Covenant, Promise, and Agree to and with the said part of the third part, heirs and assigns;

That he, the said party of the first part, his heirs, executors, administrators, or assigns, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said part of the third part, executors, administrators, or assigns, the said principal sum and interest in the above proviso mentioned, on the days and times and in manner above limited for payment thereof, according to the true intent and meaning of these presents.

And also, that he, the said party of the first part, at the time of the sealing and delivery of these presents, is lawfully seised in fee of the said lands, tenements, hereditaments, and premises, without any manner of use, trust, reservation, limitation, or condition, to alter, change, charge, incumber, or defeat the same.

And also, that he, the said party of the first part, now has in himself good right, full power, and lawful and absolute authority to convey and assure the said

premises hereby conveyed, or intended so to be, unto the said part of the third part, heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents.

And also, that from and after default shall happen to be made in payment of the said principal sum, or the interest thereof, in the above proviso mentioned, it shall and may be lawful for the said part of the third part, heirs and assigns, peaceably and quietly TO HAVE, HOLD, USE, OCCUPY, POSSESS, AND ENJOY the said lands, tenements, hereditaments, and premises, without the let, suit, hindrance, interruption, or denial of the said party of the first part, his heirs or assigns, or any other person or persons whomsoever, and that free and clear of and from all incumbrances whatsoever.

And also, that from and after such default as aforesaid, he, the said party of the first part, his heirs and assigns, and all other persons having or lawfully claiming any estate, right, title, or interest in the said lands, tenements, hereditaments, and premises, hereby conveyed, or intended so to be, by, from, under, or in trust for the said party of the first part, shall and will, from time to time, and at all times hereafter, at the costs and charges of the said part of the third part, heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful and reasonable conveyances and assurances in the law of the said premises as by the said part of the third part, heirs or assigns, or , their counsel in the law, shall be reasonably devised, advised, and required.

PROVIDED ALWAYS, and it is hereby declared and agreed, that until default shall be made in payment of the said sum and interest on the days and times in the above proviso limited and appointed for the payment thereof, it shall be lawful for the said party of the first part, his heirs and assigns, peaceably and quietly TO HOLD AND ENJOY the said premises, and to receive and take the rents and profits thereof to his and their own use and benefit, without the let, suit, hindrance, or interruption of the said part of the third part, or any person or persons claiming, or to claim, by, from, or under

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of .

Mortgage, in Fee, with Insurance Covenant.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part, WITNESSETH, that in consideration of the sum of , of lawful money of Canada, to the said party of the first part paid by the said part of the third part, the receipt whereof is hereby acknowledged,

HE, the said party of the first part, DOTH grant, bargain, sell, release, convey, and confirm, unto the said part of the third part, heirs and assigns, ALL th certain parcel or tract of land and pre-

mises situate, lying, and being in the ,
TOGETHER with the appurtenances, and all reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, use, trust, property, possession, claim, and demand of the said party of the first part therein or thereto.

TO HAVE AND TO HOLD the same, with the appurtenances, unto the said part of the third part, heirs and assigns, to the sole and only use of the said part of the third part, heirs and assigns, forever;

SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown.

AND THIS INDENTURE FURTHER WITNESSETH, that the said party of the second part, with the privity and consent of her said husband, testified by his being a party to these presents, in consideration of the premises and of the sum of five shillings to her by the said part of the third part paid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, DOTH remise, release, and forever relinquish and quit claim unto the said part of the third part, heirs, executors, administrators, and assigns, all Dower, and all right and title thereto, which she, the said party of the second part, now hath, or in the event of surviving her said husband can or may hereafter have or claim, at common law or otherwise howsoever, in, to, or out of the said lands and premises hereby conveyed, or any part thereof.

PROVIDED ALWAYS, that if the said party of the

first part, his heirs, executors, or administrators, do and shall pay unto the said part of the third part, executors, administrators, or assigns, the full sum of , with interest for the same at per cent. per annum, at the times and in manner following, that is to say, , without any deduction or abatement whatsoever, then these presents shall cease and be absolutely void to all intents and purposes whatsoever as if the same had never been executed.

And the said party of the first part doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said part of the third part, executors, administrators, and assigns, That he, the said party of the first part, his heirs, executors, or administrators, or some or one of them, will well and truly pay, or cause to be paid, unto the said part of the third part, executors, administrators, and assigns, the said principal money and interest, at the times and in manner hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents.

And that the said party of the first part now hath in himself good right to convey the said premises unto the said part of the third part in manner aforesaid and according to the true intent and meaning of these presents.

And that it shall be lawful for the said part of the third part, heirs and assigns, after default in payment of the said principal money and interest,

peaceably and quietly to enter into and upon and to hold and enjoy the said premises, without any interruption or disturbance by the said party of the first part or any other person whomsoever, free from all incumbrances.

And that the said party of the first part and his heirs, and all persons having or lawfully claiming any estate or interest in the said premises, will at all times hereafter, upon every reasonable request, and at the costs and charges of the said part of the third part, heirs, executors, administrators, or assigns, make, do, execute, and perfect such further assurances for more effectually conveying the said premises unto the said part of the third part, heirs and assigns, in manner aforesaid, as by the said part of the third part, heirs, executors, administrators, or assigns, shall be required.

Provided always, that until default shall be made in payment of the said principal money and interest as hereinbefore provided, it shall be lawful for the said party of the first part, his heirs and assigns, to hold, occupy, and enjoy, and receive and take the rents and profits of, the said lands and premises, without any molestation, hindrance, or disturbance of , the said part of the third part, heirs or assigns, or any person claiming under or them.

And the said party of the first part doth hereby, for himself, his heirs, executors, and administrators, lastly covenant, promise, and agree with and to the said part of the third part, heirs, executors, administrators, and assigns, that he will forthwith

insure, and during the continuance of this security keep insured, the said messuages and erections on the said land and premises hereby conveyed, in the sum of at the least, in some respectable insurance office, to be approved of by the said part of the third part, in the names of the said parties of the first and third parts respectively, and from time to time pay the premiums for keeping the said policy on foot as the same shall become due, and produce the receipts therefor when required by the said part of the third part, and in case of fire shall and will forthwith rebuild the said messuages and premises and apply the money to be received from such insurance office therefor or apply the same in payment of the principal money and interest hereby secured, so far as the same will extend; and that in case the said party of the first part shall omit or neglect to effect or keep on foot such insurance, it shall be lawful for the said part of the third part so to do, and that the sums paid for such purpose shall form a lien on the premises hereby conveyed, and carry interest at the rate of six per cent. per annum, from the times of such advancement until repayment, and that the said premises shall not be redeemed or redeemable until repayment thereof.

In Witness Whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of .

Memorial to Mortgage in Fee.

A MEMORIAL (to be registered pursuant to the Act of Parliament in that behalf) of an Indenture of Bargain and Sale, by way of Mortgage, bearing date the day of , in the year of our Lord one thousand eight hundred and , and made BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part.

WHEREBY IT IS WITNESSED, that the said party of the first part, for and in consideration of , of lawful money of Canada (the receipt whereof is thereby acknowledged), granted, bargained, sold, aliened, released, transferred, conveyed, assured, and confirmed, unto the said parties of the third part, their heirs and assigns, ALL th certain PARCEL or TRACT OF LAND and PREMISES situate, lying, and being, TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereto in any wise belonging: to hold to the said part of the third part, heirs and assigns, to the use of the said part of the third part, heirs and assigns, forever, subject to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown.

AND the said party of the second part, in consideration of five shillings to her paid by the said part of the third part, hath remised, released, and forever relinquished her DOWER in the said premises unto the said part of the third part, heirs, executors, administrators, and assigns. SUBJECT,

NEVERTHELESS, to a proviso therein contained, that the said Indenture shall be void on payment by the said party of the first part, heirs, executors, or administrators, to the said part of the third part, executors, administrators, or assigns, of the sum of , of lawful money of Canada, with interest thereon at per cent., on the days and times and in manner following, that is to say

Which said Indenture, as to the execution thereof by the said , is witnessed by . And this Memorial thereof is hereby required to be registered by me, the said party of the part therein mentioned.

As WITNESS my hand and seal, this day of , 18 .

Signed and sealed in the presence of .

COUNTY OF , TO WIT: , in the within memorial named, maketh oath that he was present and saw the said grantor duly execute the deed to which the within memorial relates: Also (together with another subscribing witness) saw duly execute the said memorial; and that he, Deponent, is a subscribing witness to said Deed and Memorial, and that both the said instruments were executed at .

Sworn before me, at , this day of , A. D. 18 .

Commissioner for taking Affidavits, &c.

Mortgage in Fee, with Power of Sale.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part:

WITNESSETH, that in consideration of the sum of , of lawful money of Canada, to the said party of the first part this day lent, advanced, and paid by the said party of the third part, the receipt whereof the said party of the first part do hereby acknowledge, and of and from the same do hereby release the said party of the third part, heirs, executors, administrators, and assigns, , the said party of the first part, HA granted, bargained, sold, aliened, released, transferred, conveyed, assured, and confirmed, and by these presents DO grant, bargain, sell, alien, release, transfer, convey, assure, and confirm, unto the said party of the third part, and to heirs and assigns, ALL TH certain parcel or tract of land and premises situate in the , being composed of , TOGETHER with all houses, edifices, buildings, yards, gardens, orchards, ways, waters, water-courses, trees, woods, fences, liberties, privileges, and appurtenances whatsoever, to the said lands, hereditaments, and premises belonging, or in any wise appertaining: AND all remainders, reversions, yearly and other rents, issues and profits, of and in the same lands, hereditaments, and premises, and all the estate, right, title, use, trust, property, possession, claim, and demand whatsoever, of the said

party of the first part, of, in, or to the same lands, hereditaments, and premises: To HAVE AND TO HOLD the said lands, tenements, and all and singular other the premises hereby granted, sold, and released, or intended so to be, with the appurtenances, unto and to the use of the said party of the third part, heirs and assigns, forever. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown. AND THIS INDENTURE FURTHER WITNESSETH, that the said party of the second part, with the privity and full approbation and consent of her said husband, testified by his being a party to these presents, in consideration of the premises, and also in consideration of the further sum of five shillings, of lawful money of the Province of Canada aforesaid, to her by the said party of the third part in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath remised, released, and forever relinquished and quitted claim, and by these presents doth remise, release, and forever relinquish and quit claim, unto the said party of the third part, heirs, executors, administrators, and assigns, all dower, and all right and title thereto, which she, the said party of the second part, now hath, or in the event of her surviving her said husband can or may or could or might hereafter in any wise have or claim, whether at common law or otherwise howsoever, of, in, to, or out of the lands, tenements, hereditaments, and premises hereby conveyed or hereinbefore mentioned or intended to be conveyed, with the appurtenances,

or of, in, to, or out of any part thereof: PROVIDED ALWAYS, that if the said party of the first part, heirs, executors, or administrators, do and shall pay unto the said party of the third part, executors, administrators, or assigns, the full sum of , with interest for the same, in manner and at the times following, that is to say, , without any default or abatement whatsoever, then these presents shall cease and be void, to all intents and purposes whatsoever; AND the said party of the first part doth hereby, for heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the third part, executors, administrators, and assigns, that , the said party of the first part, heirs, executors, or administrators, some or one of them, shall and will well and truly pay or cause to be paid unto the said party of the third part, executors, administrators, and assigns, the said principal sum of and interest, at the times and in manner hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents: AND ALSO, that the said party of the first part now ha . in good right to grant, bargain, sell, and convey the said lands, hereditaments, and premises, unto the said party of the third part, heirs and assigns, according to the true intent and meaning of these presents: AND FURTHER, that it shall and may be lawful to and for the said party of the third part, heirs and assigns, after default shall be made in payment of the said sum of and interest, contrary to the proviso hereinbefore con-

tained, peaceably to enter into and upon said lands, hereditaments, and premises, and to hold and enjoy the same, without any interruption or denial by the said party of the first part, or any other person whomsoever: AND THAT free and clear of and from all estates, titles, troubles, liens, charges, and incumbrances whatsoever: AND MOREOVER, that , the said party of the first part, and heirs, and all persons whomsoever claiming any estate or interest in the premises, shall and will, at all times hereafter, during the continuance of the said sum of or any part thereof, on this security, upon every reasonable request of the said party of the third part, heirs, executors, administrators, or assigns, but at the costs and charges of the said party of the third part, heirs, executors, and administrators, make, execute, and perfect all such further conveyances and assurances in the law whatsoever, for the further, better, or more perfectly granting, conveying, or otherwise assuring the said lands, hereditaments, and premises, unto and to the use of the said party of the third part, heirs and assigns, subject to the proviso aforesaid, or the equity thereof, and for the ends, intents, and purposes herein expressed, of and concerning the same, according to the true intent and meaning of these presents, as by the said party of the third part, heirs, executors, administrators, or assigns, or any of their counsel learned in the law, shall be reasonably devised and required and tendered to be made: AND IT IS FURTHER DECLARED and agreed by and between the parties to these presents, that if the said party of the first part,

heirs, executors, or administrators, shall not pay to the said party of the third part, executors, administrators, or assigns, the said sum of , and interest, or any part thereof, according to the true intent and meaning of the proviso hereinbefore in that behalf contained, and the said party of the third part, executors, administrators, and assigns, shall, after the time limited for such payment of principal or interest has expired, have given to the said party of the first part, heirs, executors, or administrators, or have left for or them, at , or their last or most usual place of abode, in this Province, notice in writing, demanding payment of the said principal money or interest, and calendar months shall have elapsed from the delivery or leaving of such notice, without such payment of principal or interest having been made (of which latter default in payment, as also of the continuance of the said principal money and interest, or some part thereof, on this security the production of these presents shall be conclusive evidence), it shall and may be lawful to and for the said party of the third part, heirs, executors, administrators, and assigns, without any further consent or concurrence of the said party of the first part, heirs and assigns, to enter into possession of the said lands, hereditaments, and premises, and to receive and take the rents and profits thereof, and, whether in or out of possession of the same, to make any lease or leases thereof as shall think fit, and also to sell and absolutely dispose of the said lands, hereditaments, and premises, with the appurtenances, either by

public auction or private sale, and in such way and manner as to shall seem meet, and to convey and assure the same, when so sold, unto the purchaser or purchasers thereof, his, her, and their heirs and assigns, or as he, she, or they shall direct and appoint: AND IT IS HEREBY DECLARED AND AGREED, that the said party of the third part, heirs, executors, administrators, and assigns, shall stand seised and be possessed of the said lands, tenements, and hereditaments, and of the rents and profits thereof, until sale, and, after sale, of the proceeds therefrom arising, upon trust in the first place, to deduct thereout all expenses which may be necessarily incurred in and attending the execution of the trusts and powers hereby created, together with interest for the same, and after payment thereof do and shall retain and pay unto and for themselves or the said principal sum of , or so much thereof as shall then remain unsatisfied, and all interest then due, and in arrear, in respect thereof, and after such payment in trust, to pay or transfer the surplus (if any) of the said rents and profits, or proceeds of the said sale, unto the said party of the first part, executors, administrators, or assigns, and also to reconvey and assure such part of the said lands, hereditaments, and premises as shall remain unsold, for any of the purposes aforesaid, unto the said party of the first part, heirs and assigns, or as or they shall direct or appoint: AND IT IS HEREBY FURTHER DECLARED AND AGREED, that the receipts of the said party of the third part, heirs, executors, administrators, and assigns, shall be good and sufficient

discharges for all moneys therein expressed to have been received, and that the person or persons paying any moneys or taking such receipt shall not afterwards be required to see to the application thereof, nor be answerable or accountable for the misapplication or non-application of the same: AND the said party of the third part doth hereby, for heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the first part, heirs and assigns, that no sale or notice of sale of the said lands, hereditaments, and premises shall be made or given, or any lease made, or any means taken for obtaining possession thereof, by the said party of the the third part, until such time as calendar months' notice, in writing, as aforesaid, shall have been given to the said party of the first part, heirs, executors, administrators, or assigns, or have been left at last or most usual place of abode, in this Province, demanding payment of the principal and interest moneys which at the end of that time shall be due, and the said party of the first part, executors, administrators, and assigns, shall have made default in payment of the same at that time: AND ALSO, that , the said party of the third part, heirs and assigns, shall and will, at the expense of the said party of the first part, heirs, executors, administrators, and assigns, at any time before such sale or sales shall take place, on payment or tender by the said party of the first part, heirs, executors, or administrators, of the said principal sum of and interest, which, at the time of such tender, shall be due and owing upon or by virtue of

this security, with all costs as aforesaid, reconvey and reassure the said lands, hereditaments, and premises, or such parts thereof as shall then remain unsold, with the appurtenances, unto the said party of the first part, heirs or assigns, or as or they shall direct or appoint, free from all incumbrances, to be made or done by the said party of the third part, heirs, executors, administrators, or assigns, in the mean time: PROVIDED ALWAYS, that until default shall be made in payment of the said sum of and interest, after notice in writing, demanding payment of the same, as hereinbefore provided, it shall be lawful for the said party of the first part, heirs and assigns, to hold, occupy, and enjoy the said lands, hereditaments, and premises, with the appurtenances, without any molestation, hindrance, interruption, or denial of, from, or by the said party of the third part, heirs, executors, administrators, or assigns, or any person claiming by, from, through, under, or in trust for , them, or either of them: PROVIDED LASTLY, that , the said party of the third part, heirs, executors, administrators, and assigns, shall not be answerable or accountable for any more moneys than or they shall actually receive by virtue of these presents, nor for any misfortune, loss, or damage which may happen to the said estate and premises in the execution of the trusts aforesaid, save and except the same shall happen by or through or their own wilful neglect or default.

IN WITNESS WHEREOF, the parties to these presents

have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of . }

RECEIVED, on the day of the date of this Indenture, the sum of , of lawful money of Canada, being the full consideration therein mentioned.

WITNESS

Mortgage, with Power of Sale and Insurance Clause.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part:

WITNESSETH, that in consideration of the sum of , of lawful money of Canada, to the said party of the first part this day lent, advanced, and paid by the said party of the third part, the receipt whereof the said party of the first part do hereby acknowledge, and of and from the same do hereby release the said party of the third part, heirs, executors, administrators, and assigns, , the said party of the first part, HA granted, bargained, sold, aliened, released, transferred, conveyed, assured, and confirmed, and by these presents DO grant, bargain, sell, alien, release, transfer, convey, assure, and confirm, unto the said party of the third part, and to heirs and assigns, ALL TH certain parcel or tract of land and premises, situate in the , being composed of

, TOGETHER with all houses, edifices, buildings, yards, gardens, orchards, ways, waters, watercourses, trees, woods, fences, liberties, privileges, and appurtenances whatsoever, to the said lands, hereditaments, and premises belonging, or in any wise appertaining: AND all remainders, reversions, yearly and other rents, issues, and profits, of and in the same lands, hereditaments, and premises, and all the estate, right, title, use, trust, property, possession, claim, and demand whatsoever, of the said party of the first part, of, in, or to the same lands, hereditaments, and premises: TO HAVE AND TO HOLD the said lands, tenements, and all and singular other the premises hereby granted, sold, and released, or intended so to be, with the appurtenances, unto and to the use of the said party of the third part, heirs and assigns, forever: SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown: AND THIS INDENTURE FURTHER WITNESSETH, that the said party of the second part, with the privity and full approbation and consent of her said husband, testified by his being a party to these presents, in consideration of the premises and also in consideration of the further sum of five shillings, of lawful money of the Province of Canada aforesaid, to her by the said party of the third part in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath remised, released, and forever relinquished and quitted claim, and by these presents doth remise, release, and forever relinquish and quit claim, unto

the said party of the third part, heirs, executors, administrators, and assigns, all dower, and all right and title thereto, which she, the said party of the second part, now hath, or in the event of surviving her said husband can, or may, or could, or might hereafter in any wise have or claim, whether at common law or otherwise, howsoever, of, in, to, or out of the lands, tenements, hereditaments, and premises hereby conveyed or hereinbefore mentioned or intended so to be conveyed, with the appurtenances, or of, in, to, or out of any part thereof: PROVIDED ALWAYS, that, if the said party of the first part, heirs, executors, or administrators, do and shall pay unto the said party of the third part, executors, administrators, or assigns, the full sum of , with interest for the same, in manner and at the times following, that is to say, , without any default or abatement whatsoever, then these presents shall cease and be void to all intents and purposes whatsoever: AND the said party of the first part doth hereby, for heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the third part, executors, administrators, and assigns, that , the said party of the first part, heirs, executors, or administrators, some or one of them, shall and will well and truly pay, or cause to be paid, unto the said party of the third part, executors, administrators, and assigns, the said principal sum of , and interest, at the time and in manner hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, according to the true intent and

meaning of these presents: AND ALSO, THAT he, the said party of the first part, his heirs, executors, administrators, or assigns, or some or one of them, shall and will from time to time during the continuance of the said sum of money and interest, or any part thereof, on this security, insure and continue to be insured upon the buildings now standing, or hereafter to be erected, upon the said premises, or upon such of them as are specified in and by a certain schedule to these presents prefixed, the sum of money in and by the said schedule particularly stated and set forth, and shall and will moreover in all things well and truly perform, fulfil, and keep all and singular other the covenants, agreements, and stipulations in the said schedule contained, according to the true intent and meaning of the said schedule and of these presents. AND ALSO, THAT the said party of the first part now ha in good right to grant, bargain, sell, and convey the said lands, hereditaments, and premises unto the said party of the third part, heirs and assigns, according to the true intent and meaning of these presents: AND FURTHER, that it shall and may be lawful to and for the said party of the third part, heirs and assigns, after default shall be made in payment of the said sum of , and interest, contrary to the proviso hereinbefore contained, peaceably to enter into and upon the said lands, hereditaments, and premises, and to hold and enjoy the same, without any interruption or denial by the said party of the first part, or any other person whomsoever: AND THAT free and clear of and from all estates, titles, troubles,

liens, charges, and incumbrances whatsoever: AND MOREOVER, that , the said party of the first part, and heirs, and all persons whomsoever, claiming any estate or interest in the premises, shall and will, at all times hereafter, during the continuance of the said sum of , or any part thereof, on this security, upon every reasonable request of the said party of the third part, heirs, executors, administrators, or assigns, but at the costs and charges of the said party of the third part, heirs, executors, and administrators, make, execute, and perfect all such further conveyances and assurances in the law, whatsoever, for the further, better, or more perfectly granting, conveying, or otherwise assuring the said lands, hereditaments, and premises unto and to the use of the said party of the third part, heirs and assigns, subject to the proviso aforesaid, or the equity thereof, and for the ends, intents, and purposes herein expressed of and concerning the same, according to the true intent and meaning of these presents, as by the said party of the third part, heirs, executors, administrators, or assigns, or any of their counsel learned in the law, shall be reasonably devised and required, and tendered to be made: AND IT IS FURTHER DECLARED and agreed by and between the parties to these presents that if the said party of the first part, heirs, executors, or administrators, shall not pay to the said party of the third part, executors, administrators, or assigns, the said sum of , and interest, according to the true intent and meaning of the proviso hereinbefore in that behalf contained,

and the said party of the third part, executors, administrators, and assigns, shall, after the time limited for such payment has expired, have given to the said party of the first part, heirs, executors, or administrators, or have left for , or them, at , or their last or most usual place of abode, in this Province, notice in writing, demanding payment of the said principal money and interest, and calendar months shall have elapsed from the delivery or leaving of such notice, without such payment having been made (of which latter default in payment, as also of the continuance of the said principal money and interest, or some part thereof, on this security, the production of these presents shall be conclusive evidence), it shall and may be lawful to and for the said party of the third part, heirs and assigns, without any further consent or concurrence of the said party of the first part, heirs and assigns, to enter into possession of the said lands, hereditaments, and premises, and to receive and take the rents and profits thereof, and whether in or out of possession of the same, to make any lease or leases thereof as shall think fit and also to sell and absolutely dispose of the said lands, hereditaments, and premises, with the appurtenances, in such way and manner as to shall seem meet, and to convey and assure the same, when so sold, unto the purchaser or purchasers thereof, his, her, and their heirs and assigns, or as he, she, or they shall direct and appoint; AND IT IS HEREBY DECLARED AND AGREED that the said party of the third part, heirs, executors, administrators, and assigns,

shall stand seised and be possessed of the said lands, tenements, and hereditaments, and of the rents and profits thereof, until sale, and, after sale, of the proceeds therefrom arising, upon trust in the first place, to deduct thereout all expenses which may be necessarily incurred, and attend the execution of the trust and powers hereby created, together with interest for the same, and after payment thereof do and shall retain and pay unto and for the said principal sum of , or so much thereof as shall then remain unsatisfied, and all interest then due, and in arrear, in respect thereof, and after such payment in trust, to pay or transfer the surplus (if any) of the said rents and profits, or proceeds of the said sale, unto the said party of the first part, executors, administrators, or assigns, and also to re-convey and assure such part of the said lands, hereditaments, and premises as shall remain unsold, for any of the purposes aforesaid, unto the said party of the first part, heirs and assigns, or as shall direct or appoint: AND IT IS HEREBY FURTHER DECLARED AND AGREED, that the receipts of the said party of the third part, heirs and assigns, shall be good and sufficient discharges for all moneys therein expressed to have been received, and that the person or persons paying any moneys and taking such receipt shall not afterwards be required to see to the application thereof, nor be answerable or accountable for the misapplication or non-application of the same: AND the said party of the third part do hereby, for heirs, executors, and administrators, covenant, promise, and agree to and

with the said party of the first part, heirs and assigns, that no sale or notice of sale of the said lands, hereditaments, and premises shall be made or given, or any lease made, or any means taken for obtaining possession thereof, by the said party of the third part, until such time as calendar months' notice, in writing, as aforesaid, shall have been given to the said party of the first part, heirs, executors, administrators, or assigns, or have been left at last or most usual place of abode, in this Province, demanding payment of the principal and interest moneys which at the end of that time shall be due, and the said party of the first part, executors, administrators, and assigns, shall have made default in payment of the same at that time: AND ALSO, that, the said party of the third part, heirs and assigns, shall and will, at the expense of the said party of the first part, heirs, executors, administrators, and assigns, at any time before such sale or sales shall take place, on payment or tender by the said party of the first part, heirs, executors, or administrators, of the said principal sum of , and interest, which at the time of such tender shall be due and owing upon or by virtue of this security, with all costs as aforesaid, re-convey and re-assure the said lands, hereditaments, and premises, or such parts thereof as shall then remain unsold, with the appurtenances, unto the said party of the first part, heirs or assigns, or as or they shall direct or appoint, free from all incumbrances to be made or done by the said party of the third part, heirs or assigns, in the mean time: PRO-

VIDED ALWAYS, that, until default shall be made in payment of the said sum of , and interest, after notice, in writing, demanding payment of the same, as hereinbefore provided, it shall be lawful for the said party of the first part, heirs and assigns, to hold, occupy, and enjoy the said lands, hereditaments, and premises, with the appurtenances, without any molestation, hindrance, interruption, or denial of, from, or by the said party of the third part, heirs or assigns, or any person claiming by, from, through, under, or in trust for , them, or either of them; PROVIDED, LASTLY, that , the said party of the third part, heirs, executors, administrators, and assigns, shall not be answerable or accountable for any more moneys than or they shall actually receive by virtue of these presents, nor for any misfortune, loss, or damage which may happen to the said estate and premises in the execution of the trusts aforesaid, save and except the same shall happen by or through or their own wilful neglect or default.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of .

RECEIVED, on the day of the date of this Indenture the sum of , of lawful money of Canada, being the full consideration.

WITNESS,

The Schedule above referred to.

Mortgage, with Power of Sale and Insurance Clause.

SHORTER FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the of , in the county of , and Province of Canada, of the first part, , the wife of the said part of the first part, of the second part, and , of the third part, WITNESSETH, that in consideration of the sum of , this day paid to the said part of the first part by the said party of the third part (the receipt whereof the said part of the first part do hereby acknowledge), he, the said part of the first part, do hereby grant, and she, the said party of the second part, for the purpose of releasing her right of dower in the hereditaments and premises hereinafter described, and with the concurrence of the said part of the first part, doth hereby release, unto the said part of the third part, heirs and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises situate in the , TOGETHER with all houses, buildings, ways, lights, waters, water-courses, trees, woods, fences, rights, privileges, easements, advantages, and appurtenances whatsoever to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof or appurtenant thereto, AND all the estate and interest of the said part of the first part in the said premises: TO HOLD the said premises unto the said part of the third part,

heirs and assigns, to the use of the said part of the third part, heirs and assigns, forever. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown. PROVIDED ALWAYS, and it is hereby agreed and declared, that, if the said part of the first part, heirs, executors, administrators, or assigns, shall pay unto the said part of the third part, executors, administrators, assigns, the sum of , together with interest for the same, at the rate of six per cent. per annum, in manner and at the times following: that is to say, , without any deduction, then these presents shall cease and be void to all intents and purposes whatsoever.

AND THE SAID PART OF THE FIRST PART do hereby, for heirs, executors, and administrators, covenant with the said part of the third part, executors and administrators, that , the said part of the first part, heirs, executors, or administrators, will pay to the said part of the third part, executors, administrators, or assigns, the said sum of , and interest, at the times and in manner hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents.

AND IT IS HEREBY DECLARED that if default shall be made in payment of the said principal money hereby secured, or any part thereof, or the interest thereof, or any part thereof, at the time hereinbefore appointed for the payment of the same, contrary to

the true intent and meaning of the proviso and covenant hereinbefore in that behalf contained, then, and at any time thereafter, it shall and may be lawful for the said part of the third part, executors, administrators, or assigns, either with or without the concurrence of the said part of the first part, heirs or assigns, to sell the said premises hereinbefore expressed to be hereby granted, or any part or parts thereof, either together or in parcels, and either by public auction or private contract, for such price as may appear reasonable, and to buy in or rescind any contract for sale, and re-sell, without being responsible for loss occasioned thereby: AND to execute and do all such assurances and things for effectuating any such sale as or they shall think fit. PROVIDED, NEVERTHELESS, that the said part of the third part, executors, administrators, or assigns, shall not execute the power of sale hereinbefore contained until he or they shall have given to the said part of the first part, heirs, executors, administrators, or assigns, or left at , or their last place of abode in Upper Canada, or upon the said premises hereby granted, a notice in writing, to pay off the moneys for the time-being owing upon the security of these presents, and until default shall have been made in payment of the whole, or any part of such moneys for four calendar months after giving or leaving such notice: PROVIDED ALSO, that, upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether the case mentioned in the clause lastly hereinbefore contained has happened,

not whether any money remains upon the security of these presents, nor as to the propriety or regularity of such sale; and, notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall as regards the purchaser or purchasers be deemed to be within the aforesaid power, and be valid accordingly. AND IT IS HEREBY DECLARED, that the said part of the third part, executors, administrators, or assigns, shall, out of the moneys arising from any sale in pursuance of the aforesaid power, in the first place, pay the expenses incurred on such sale, or otherwise in relation to the said premises: AND, in the next place, apply such moneys in or towards the satisfaction of the said principal sum of , or so much thereof as shall then remain undischarged, and all interest then-due in respect thereof, and all other moneys then owing upon the security of these presents, and then pay the surplus (if any) of the moneys to arise from such sale unto the said part of the first part, heirs or assigns: PROVIDED ALWAYS, that the said part of the third part, executors, administrators, or assigns, shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts, or any of them.

AND THE SAID PART OF THE FIRST PART do hereby, for heirs, executors, and administrators, covenant with the said part of the third part, heirs and assigns, that , the said part of the first part, now ha power to grant all and singular the said premises unto and to the use of the said

part of the third part, heirs and assigns, in manner aforesaid, and free from incumbrances: AND THAT , the said part of the first part, and heirs, and every other person lawfully or equitably claiming any estate or interest in the premises, will, at all times, at the request of the said part of the third part, heirs, executors, administrators, or assigns, but at the cost of the said part of the first part, heirs, executors, or administrators, execute and do all such assurances and acts, for further or better assuring all or any of the said premises to the use of the said part of the third part, heirs and assigns, in manner aforesaid, as by him or them shall be reasonably required.

PROVIDED LASTLY, and it is hereby declared and agreed, that until default shall be made in payment of the said principal money, secured by these presents, or the interest thereof, or any part thereof respectively, contrary to the form and effect of the proviso and covenant for payment of the same hereinbefore contained, it shall be lawful for the said part of the first part, heirs or assigns, to hold and enjoy and to receive the rents and profits of the said hereditaments and premises, without any eviction, claim, or demand whatsoever from or by the said part of the third part, heirs or assigns, or from or by any person rightfully claiming under him or them.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of . }

RECEIVED, on the day of the date of this mortgage, from the party thereto of the third part, the sum of , being the full consideration money therein mentioned.

WITNESS.

Covenant to be taken as part and parcel of the within Indenture of Mortgage, and to be treated and construed in all respects as if inserted therein.

THE WITHIN NAMED part of the first part, for heirs, executors, and administrators, do hereby covenant to and with the within named part of the third part, executors, administrators, and assigns, in manner following, that is to say, that , the said part of the first part, executors, administrators, and assigns, will, so long as any money shall remain on this present security, keep all the messuages and buildings upon the hereditaments and premises hereby granted insured against loss or damage by fire, in some reputable British or Canadian Insurance Office, to be approved of by the said part of the third part, executors, administrators, or assigns, in the sum of pounds at least, and will duly and punctually pay all premiums and sums of money necessary for such purpose, and will forthwith assign and deliver to the said part of the third part, executors, administrators, and assigns, the policy or policies of such insurance and the receipt for every such payment. AND ALSO, that if default shall be made in keeping the said premises so insured, it shall be lawful for, but not

incumbent on, the said part of the third part, executors, administrators, or assigns, out of or their own moneys to insure and keep insured the said premises in any sum, not exceeding pounds, and that the said part of the first part, executors, administrators, or assigns, will repay to the said part of the third part, executors, administrators, or assigns, all moneys expended for that purpose by or them, with interest thereon at the rate aforesaid, from the time of the same respectively having been advanced or paid, and that until such repayment the same shall be a further charge upon the said premises hereinbefore expressed to be hereby granted. AND it is hereby declared that all sums of money to be received in respect of such policy or policies of insurance shall be received by the said part of the third part, executors, administrators, or assigns, and be held by him or them IN TRUST, for better securing the repayment of the said principal money, secured by these presents, and the interest thereof, and any moneys which shall have been paid or expended by him or them in and about such insurance and insurances, and interest thereon as aforesaid; and subject thereto, IN TRUST for the said part of the first part, executors, administrators, and assigns.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal, this day of , in the year of our Lord one thousand eight hundred and .

Signed, sealed, and delivered }
in the presence of : }.

Mortgage Memorial, with Power of Sale.

A MEMORIAL (to be registered pursuant to the Acts of Parliament in that behalf) of an indenture of mortgage, bearing date the day of , in the year of our Lord one thousand eight hundred and , and made BETWEEN , of the first part, , the wife of the said party of the first part, of the second part, and , of the third part; WHEREBY the said party of the first part, for and in consideration of , of lawful money of Canada, the receipt whereof is thereby acknowledged, did grant, bargain, sell, release, convey, and confirm, and the said party of the second part, for the purpose of releasing her right of DOWER, did release, unto the said party of the third part, heirs and assigns, all and singular th certain parcel or tract of land and premises situate in the , TO HOLD the same, with all the privileges and appurtenances thereof, to the said party of the third part, heirs and assigns, to and their own use forever; SUBJECT, NEVERTHELESS, to a proviso therein contained, that the said Indenture, and every thing therein, should be absolutely void on payment by the said party of the first part, his heirs, executors, administrators, or assigns, to the said party of the third part, executors, administrators, or assigns, of the sum of , of lawful money of the province of Canada, with interest thereon, on the day and time and in manner following, that is to say , which Indenture contains a power to the said party of the third part to sell and dispose of the said lands and

premises in case of default made in the payment of the said sum of money and interest, or any part thereof, contrary to the above proviso: AND is witnessed by , of . And this Memorial thereof is hereby required to be registered by me, the said party of the part therein mentioned.

As WITNESS my hand and seal, this day of , 18 .

Signed and sealed in the presence of .

COUNTY OF , to wit: , of , in the said County , in the within Memorial named, maketh oath and saith, that he was present and did see the Indenture to which the said memorial relates, duly executed, signed, sealed, and delivered by the therein named , and that he is a subscribing witness to the execution of the said Indenture:—that he, this deponent, also saw the said memorial duly signed and sealed by the therein named for registry thereof, which said memorial was attested by him, this deponent, and another subscribing witness, and that both said instruments were executed at .

Sworn before me, at , in the county of , this day of , 18 .

A Commissioner in B. R., &c.

Mortgage in Fee.

SHORT FORM UNDER STATUTE.

THIS INDENTURE, made day of , one thousand eight hundred and , in pursuance of the act to facilitate the conveyance of real property, BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part, WITNESSETH, that in consideration of , of lawful money of Canada, now paid by the said part of the third part to the said party of the first part (the receipt whereof is hereby acknowledged), he, the said party of the first part, DOTH grant unto the said part of the third part, heirs and assigns forever, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the , To HAVE AND TO HOLD unto the said part of the third part, heirs and assigns, to and for and their sole and only use forever, SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown.

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators, or assigns, do and shall pay unto the said part of the third part, heirs, executors, administrators, or assigns, the full sum of , with interest thereon, at the rate of six per cent. per annum, in manner following, that is to say, , without any deduction, defalcation, or abatement out of the same,

for or in respect of any taxes, rates, levies, charges, rents, assessments, statute labor, or other impositions whatsoever, now or hereafter to be rated, charged, assessed, or imposed, by authority of Parliament, or otherwise howsoever, on the said lands and premises, or any part thereof, or on the said sum of money and interest, or any part thereof, or on the said part of the third part, heirs, executors, administrators, or assigns, in respect thereof, or for or in respect of any other matter or thing whatsoever; and, moreover, until default shall be made in payment of the said sum of money in this proviso mentioned, or the interest thereof, do and shall well and truly pay, do, and perform all the taxes, rates, levies, charges, rents, assessments, statute labor, and other impositions aforesaid; THEN, from and immediately after such payment so made as aforesaid, and the observance, performance, and fulfilment of the provisions, agreements, and stipulations in this proviso particularly set forth, these presents, and every clause, covenant, matter, and thing herein contained, shall be absolutely null and void, to all intents and purposes whatsoever, as if the same had never been made; AND the said party of the first part doth hereby, for himself, his heirs, executors, and administrators, COVENANT, PROMISE, AND AGREE, to and with the said part of the third part, heirs, executors, administrators, and assigns, THAT he, the said party of the first part, his heirs, executors, or administrators, shall and will pay unto the said part of the third part, executors, administrators, or assigns, the said sum of money in the above proviso

mentioned, with interest for the same as aforesaid, at the days and times and in manner above limited for payment thereof; AND shall and will in every thing well, faithfully, and truly do, observe, perform, fulfil, and keep all and singular the provisions, agreements, and stipulations in the said above proviso particularly set forth, according to the true intent and meaning of these presents and of the said above proviso, and indemnify the said part of the third part, heirs, executors, administrators, and assigns, therefrom; AND the said party of the first part, covenants with the said part of the third part, that he HATH the right to convey the said lands to the said part of the third part,

; AND that from and after default shall happen to be made in the payment of the said sum of money in the above proviso mentioned, or any part thereof, or in the payment of the interest thereon, or of any part thereof, or in the doing, performing, or keeping some one or more of the covenants, agreements, and stipulations in this Indenture contained, contrary to the true intent and meaning thereof, then and thenceforth the said part of the third part shall have quiet possession of the said land, free from all incumbrances of what nature or kind soever and whensoever and by whomsoever made, done, or suffered; and also free from all manner of taxes, rates, and assessments, and free from all judgments; AND ALSO, that the said party of the first part hath done no act to incumber the said land; AND ALSO, that after default as aforesaid, the said party of the first

part will execute such further assurances of the said land as may be requisite; AND the said party of the second part, wife of the said party of the first part, hereby bars her Dower in the said lands. PROVIDED LASTLY, that until default shall be made in payment of the said sum of money in the above proviso mentioned, or the interest thereof, or of or in the doing, observing performing, fulfilling, or keeping some one or more of the provisions, agreements, or stipulations in this Indenture contained, contrary to the true intent and meaning of the said Indenture, it shall and may be lawful to and for the said party of the first part, his heirs and assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said lands, tenements, hereditaments, and premises, with the appurtenances, and receive and take the rents, issues, and profits thereof, to his and their own use and benefit, without the let, suit, hindrance, interruption, or denial of or by the said part of the third part, heirs, executors, administrators, or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall and may lawfully claim, by, from, or under , them, or any or either of them.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals.

Signed, sealed, and delivered }
in the presence of . }

RECEIVED, on the day of the date of the above Indenture, of and from the part of the third part,

the sum of , being the full consideration therein mentioned .

WITNESS.

Mortgage in Fee, under Statute.

SHORTER FORM.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , in pursuance of the act to facilitate the conveyance of real property, BETWEEN , of the first part, , wife of the said party of the first part, of the second part, and , of the third part, WITNESSETH, that the said party of the first part, in consideration of the sum of , of lawful money of Canada, now paid to him by the said party of the third part (the receipt whereof is hereby acknowledged), DOTH GRANT unto the said party of the third part, his heirs and assigns for ever, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the of , in the County of , in the Province of Canada, and being composed of , TO HAVE AND TO HOLD unto the said party of the third part, his heirs and assigns, to and for his and their sole and only use forever. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown. PROVIDED, ALWAYS, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators, or assigns, shall pay, or cause to be paid, unto the said party of the third part, his exe-

cutors, administrators, or assigns, the full and just sum of , with interest for the same, at the rate of six per cent. per annum, at the times and in the manner following, that is to say, ;
AND also in case of default in the payment of the principal or interest, or of any part or instalment thereof, within one month after any of the days or times when the same is payable, shall immediately thereafter pay the whole of the principal and interest then remaining due, then these presents shall be void, but otherwise shall remain in full force and virtue, PROVIDED ALSO, *and it is hereby declared and agreed by and between the parties hereto, that in default of such payment of principal and interest, or of any part thereof, it shall and may be lawful for the said party of the third part, his heirs, executors, administrators, or assigns, after one calendar month's notice in writing given to the said party of the first part, his heirs or assigns, or left at his or their last place of abode, absolutely to sell and dispose of the said lands and tenements, or any part thereof, either by public auction or private contract, and out of the money arising from such sale, to pay and reimburse himself or themselves all the principal money and interest then remaining unpaid, and all costs, charges, and expenses that may have been incurred, and to pay over the surplus thereof (if any) to the said party of the first part, his heirs or assigns;* AND *any purchaser at such sale shall not be bound to see to the application of the purchase-money, nor to inquire into the propriety or regularity of any sale.*

And the said party of the first part covenants with the said party of the third part, that he will pay the said principal money and interest on the days and times aforesaid, and in default of payment of the same, or of any part or instalment thereof, within one month after any of the days or times when the same is payable, that he will immediately pay the whole of the principal money and interest then remaining due: THAT he has the right to convey the said lands to the said party of the third part: THAT he will execute such further assurances as may be requisite: THAT he has done no act to incumber the said lands: AND THAT after default in payment of the said mortgage money and interest as aforesaid, the said party of the third part shall have quiet possession of the said lands, free from all incumbrances: PROVIDED, ALWAYS, that until default be made in the payment of the said mortgage money and interest as aforesaid, it shall be lawful for the said party of the first part peaceably and quietly to have, hold, occupy, and enjoy the said lands, without the interruption of the said party of the third part, or any person claiming under him; AND the said party of the second part releases to the said party of the third part all her Dower in the said lands.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals.

Signed, sealed, and delivered }
in the presence of . }

Mortgage in Fee, under Statute.

ANOTHER SHORT FORM.

THIS INDENTURE, made the day of , A. D. one thousand eight hundred and , in pursuance of the act to facilitate the conveyance of real property, BETWEEN A. B., of , of the first part, C. D., wife of the said party of the first part, of the second part, and E. F., of , of the third part, WITNESSETH, that the said party of the first part, in consideration of , already advanced to him by the said party of the third part, doth, for himself, his heirs, executors, and administrators, covenant with the said party of the third part, his executors, administrators, and assigns, that the said party of the first part, his executors, administrators, or assigns, will pay unto the said party of the third part, his executors, administrators, or assigns, the said sum of , on the day of , A. D. 18 , and interest after the rate of per cent. per annum on the said sum of , from the day of , now last past, on every day of and day of , until the said principal money shall be paid.

AND the said party of the first part doth hereby grant and convey unto the said party of the third part, and his heirs and assigns, all the hereditaments, lands, and premises described in the Schedule hereto, with their actual and reputed appurtenances, and all the estate and interest of the said party of the first part therein. TO HOLD the said hereditaments, lands, and premises, unto and to the use of the said party of the third part, his heirs and assigns, forever.

PROVIDED, that if the said principal and interest moneys should be respectively paid according to the foregoing covenant, the said party of the third part, his heirs or assigns, shall thereupon on the request and at the costs of the said party of the first part, his heirs or assigns, re-convey the said hereditaments and premises to him or them, and his or their heirs, or as he or they shall direct. And that until breach of the said covenant, the said party of the first part, his heirs or assigns, may occupy or receive the profits of the said hereditaments, lands, and premises, but subject to the several mortgages or other incumbrances now charged or existing on the same. But that after breach of the said covenant, may sell the said hereditaments, lands, and premises, or any part thereof, together or in lots, by public auction, or private contract, and subject to any special or other stipulations as to title, evidence of title, or otherwise; AND may buy in and re-sell the same, or rescind or vary any contract relating thereto, and, after payment of all moneys hereby secured, any surplus of the proceeds of such sale shall be paid to the said party of the first part, his heirs or assigns.

PROVIDED, that any person who shall exercise the foregoing power of sale after the full payment of all moneys hereby secured or before the expiration of months from the date hereof, without the written consent of the said party of the first part, his heirs or assigns, shall be answerable to the said party of the first part, his heirs or assigns, as for a breach of trust, and also in damages, but no purchaser shall be concerned to ascertain that any money

is owing on this security, or that such time has expired, or be affected by notice that such sale is irregular or unauthorized.

PROVIDED ALWAYS, and it is further agreed by and between the said parties of the first and third parts, that upon any sale being made by the said party of the first part, his heirs or assigns, during the said period of months from the date thereof, or before foreclosure or sale by the said party of the third part, his heirs, executors, administrators, or assigns, of any part or portion of the said lands and premises hereby conveyed or intended so to be, for the full value thereof, and upon payment thereof, by the said party of the first part, his heirs or assigns, to the said party of the third part, his heirs, executors, administrators, or assigns, or upon security being given therefor to the said party of the third part, his heirs, executors, administrators, or assigns, to his or their entire satisfaction, not only as to security, but as to time for payment thereof, then he, the said party of the third part, his heirs or assigns, shall thereupon, at the request and at the costs of the said party of the first part, his heirs or assigns, release such part or portion so sold as aforesaid to the purchaser or purchasers thereof freed and absolutely discharged from this mortgage security, but not in discharge of the other hereditaments, lands, and premises comprised in this security, or of the said party of the first part, his heirs, executors, or administrators, from the residue of the moneys hereby secured.

AND the said party of the first part, for himself,

his heirs, executors, administrators, and assigns (but so as in any action which may be brought after foreclosure or sale of all or any part of the said hereditaments, lands, and premises, to render him or them liable only for the acts and defaults of himself and all persons claiming or to claim through, under, or in trust for him), covenants with the said party of the third part, his heirs, executors, administrators, and assigns, that the said party of the first part hath power hereby to assure the said hereditaments, lands, and premises, in manner aforesaid, free from incumbrances, except those particularly mentioned in the said Schedule hereto. And that the same shall be held and enjoyed accordingly, and shall at any time or times, at the costs of the said party of the first part, his heirs, executors, administrators, or assigns, before foreclosure or sale and conveyance thereof and afterwards at the costs of the person or persons requiring the same, be further and more effectually or satisfactorily assured to the use of the said party of the third part, his heirs or assigns, or otherwise by such acts, deeds, or assurances as the said party of the third part, his heirs, executors, administrators, or assigns, shall reasonably require and tender to be done, executed, or made. And the said party of the second part, wife of the said party of the first part, hereby bars her dower in the said land and premises.

In Witness, &c.

Signed, &c.

The Schedule above referred to.

Mortgage of Lease.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and .

BETWEEN , of the first part, and , of the second part. WHEREAS, by an Indenture of Lease, bearing date on or about the day of , in the year of our Lord one thousand eight hundred and , and made between ; The said lessor therein named did demise and lease unto the said lessee therein named, executors, administrators, and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises situate, lying, and being in the , To HOLD the same, with their appurtenances unto the said lessee, executors, administrators, and assigns, from the day of , in the year of our Lord one thousand eight hundred and , for and during the term of years from thence next ensuing, and fully to be complete and ended, at the yearly rent of , and under and subject to the lessee's covenants and agreements in the said Indenture of Lease reserved and contained .

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of , of lawful money of Canada, now paid by the said part of the second part to the said part of the first part (the receipt whereof is hereby acknowledged), , the said part of the first part, Do hereby grant, bargain, sell, assign, transfer, and set over unto the said part of the second part, executors, administrators, and

assigns, ALL AND SINGULAR the said parcel or tract of land, and all other the premises comprised in and demised by the said hereinbefore in part recited Indenture of Lease: TOGETHER with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom: TO HAVE AND TO HOLD the same, together with all houses and other buildings, easements, privileges, and appurtenances thereunto belonging, or in any wise appertaining, unto the said part of the second part, executors, administrators, and assigns, from henceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term, right of renewal (if any), and other the interest of the said part of the first part therein. SUBJECT to the payment of the rent and the observance and performance of the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

PROVIDED ALWAYS, that if the said part of the first part, heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the said part of the second part, executors, administrators, or assigns, the full sum of , with interest for the same, at per cent. per annum, on the days and times and in manner following, that is to say, , without making any deduction, defalcation, or abatement thereout, on any account whatsoever, then these presents, and every clause, covenant, matter, and thing herein contained, shall cease, determine, and be absolutely void to all intents

and purposes whatsoever, as if the same had never been executed.

And the said part of the first part do hereby, for heirs, executors, and administrators, covenant, promise, and agree to and with the said part of the second part, executors, administrators, and assigns, in manner following, that is to say,

That , the said part of the first part, heirs, executors, and administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said part of the second part, executors, administrators, or assigns, the said principal sum and interest in the above proviso mentioned, at the times and in manner hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents.

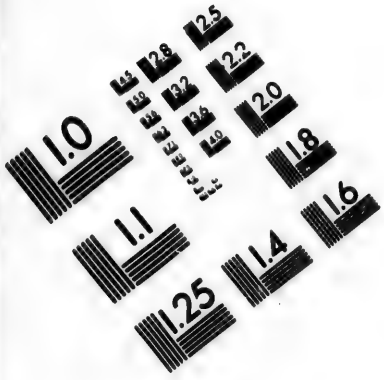
And that the said hereinbefore in part recited Indenture of Lease is, at the time of the sealing and delivery of these present, a good, valid, and subsisting lease in the law, and not surrendered, forfeited, or become void or voidable; and that the rent and covenants therein reserved and contained have been duly paid and performed by the said part of the first part, up to the day of the date thereof.

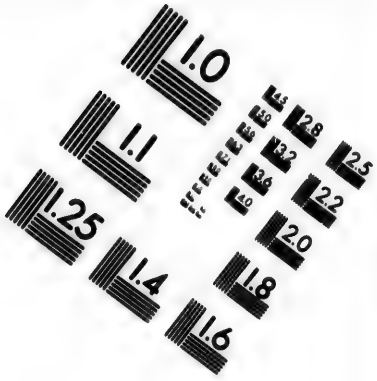
And that the said part of the first part now ha in good right, full power, and lawful and absolute authority to assign the said lands and premises in manner aforesaid, and according to the true intent and meaning of these presents.

And that in case of default in payment of the said principal money or interest, or any part thereof,

contrary to the proviso and covenant aforesaid, it shall be lawful for the said part of the second part, executors, administrators, and assigns, to enter into and upon and hold and enjoy the said premises for the residue of the term granted by the said Indenture of Lease, and any renewal thereof (if any), for their own use and benefit, without the let, suit, hindrance, interruption, or denial of the said part of the first part, executors, administrators, or assigns, or any other persons whomsoever; and that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by and at the expense of the said part of the first part, heirs, executors, and administrators, well and effectually saved, defended, and kept harmless of, from, and against all former and other gifts, grants, bargains, sales, leases, and other incumbrances whatsoever.

And that the said part of the first part, heirs, executors, administrators, and assigns, and all other persons claiming any interest in the said premises, shall and will, from time to time, and at all times hereafter, so long as the said principal sum or any part thereof shall remain due and owing on this security, at the request and costs of the said part of the second part, executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further assignments and assurances in the law of the said premises for more effectually assigning and assuring the said premises for the residue of the said term, and any renewal thereof (if any), subject to the proviso aforesaid, as by the said part of the second





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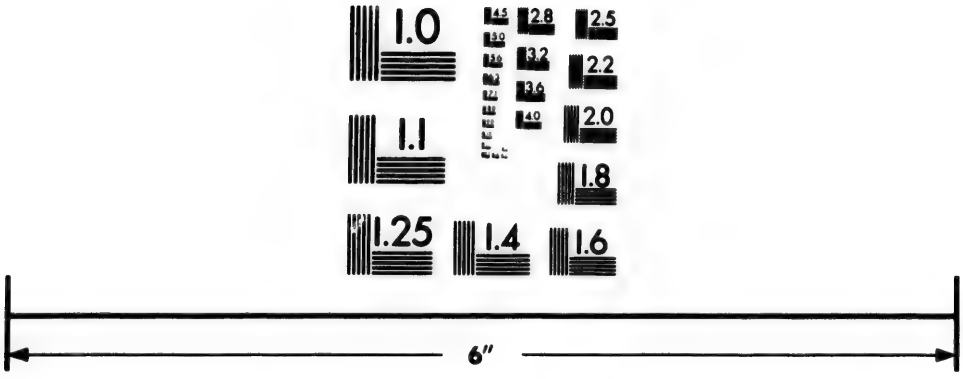

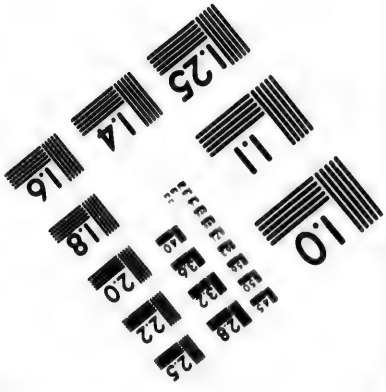

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part, executors, administrators, or assigns, or counsel in the law, shall be reasonably advised or required.

And that the said part of the first part, executors, administrators, or assigns, shall and will, from time to time, until default in payment of the said principal sum or the interest thereof, and until the said part of the second part shall enter into possession of the said premises as aforesaid, well and truly pay, or cause to be paid, the said yearly rent by the said Indenture of Lease reserved, and all taxes payable on the said premises, and perform and keep all the lessee's covenants and agreements in the said lease contained, and indemnify and save harmless the said part of the second part therefrom, and from all loss, costs, charges, damages, and expenses in respect thereof.

And also shall and will, from time to time, and at all times hereafter, so long as the said principal money and interest, or any part thereof, shall remain due on this security, insure and keep insured the buildings erected or to be erected on the land hereby assigned, or any part thereof, against loss or damage by fire, in some one of the public Fire Insurance Offices (English or Canadian), in the full amount hereby secured, at the least, and, at the expense of the said part of the first part, immediately assign the Policy, and all benefit thereof, to the said part of the second part, executors, administrators, and assigns, as additional security for the payment of the principal money and interest hereby secured; and that in default of such insurance it

shall be lawful for the said part of the second part, executors, administrators, or assigns, to effect the same, and the premium or premiums paid therefor shall be a charge or lien on the said premises hereby assigned, which shall not be redeemed or redeemable until payment thereof, in addition to the said principal money and interest as aforesaid.

PROVIDED, LASTLY, that until default in payment of the said principal money and interest hereby secured, it shall be lawful for the said part of the first part, executors, administrators, or assigns, to hold, occupy, possess, and enjoy the said lands and premises hereby assigned, with the appurtenances, without any molestation, interruption, or disturbance of, from, or by the said part of the second part, executors, administrators, or assigns, or any person or persons claiming or to claim by, from, through, under, or in trust for him, them, or any of them.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of . }

RECEIVED on the date hereof, the sum of , being the full consideration above mentioned.

IN PRESENCE OF

Release of Mortgage.

UNDER STATUTE.

To the Registrar of the County of .

I, A. B., of , Do CERTIFY that C. D., of , hath satisfied all money due upon a certain mortgage made by the said C. D. to me, bearing date the day of , one thousand eight hundred and , and registered at of the clock in the forenoon of the day of following, and that such mortgage is therefore discharged.

As WITNESS my hand, this day of , 18 .

(Signed) A. B.

E. F., of ,
G. H., of , } Witnesses.

Affidavit of Execution.

Canada,
County of ,
to wit.

E. F., above named and described, maketh oath and saith that he and the other subscribing witness to the foregoing certificate of discharge of mortgage were present and saw the same duly executed by the therein named ; and that he is one of the subscribing witnesses to the same; and that the same was executed as aforesaid, at .

Sworn before me, at ,
in the county of , this
day of , 18 .

A Commissioner, &c., in and for the County of .

CHAPTER XV.

Of Naturalization.

NATURALIZATION is the act by which an alien, or foreigner, becomes invested with the rights and privileges of a native-born subject. In Canada a person duly naturalized is entitled to all the privileges, rights, and capacities which a natural-born subject of the British Crown can enjoy or transmit.

The law relating to aliens is to be found in the Cons. St. Canada, cap. 8. That act provides that every alien residing in any part of Canada immediately before the 18th day of January, 1849, or who at any time thereafter came or comes to reside in any part of Canada, with intent to settle therein, and who, after a continued residence therein for a period of three years or upwards, has taken the oaths or affirmations of residence and allegiance (or the oath or affirmation of residence only, if a female), and procured the same to be filed of record as thereinafter prescribed, so as to entitle him or her to a certificate of naturalization as thereinafter provided, shall thenceforth enjoy and may transmit all the rights and capacities which a natural-born subject of Her Majesty can enjoy or transmit.

The first step for a foreigner to take for the pur-

pose of getting naturalized is to take the oaths of residence and allegiance. These oaths must be taken before a justice of the peace within the city, town, parish, village, or township in which the alien resides. When taken, the justice will grant a certificate setting forth that such alien has taken and subscribed the said oath or affirmation, and (if the fact is so) that such justice has reason to believe that such alien has been so resident within the province for a period of three years or upwards, that he or she is a person of good character, and that there exists to the knowledge of the justice no reason why the alien should not be granted all the rights and capacities of a natural-born British subject. This certificate must then be presented to the Court of Quarter Sessions or to the Recorder's Court of the county or city within the jurisdiction of which he resides in Upper Canada, or to the Circuit Court in and for the circuit within which he resides in Lower Canada, in open court, on the first day of some general sitting thereof. The court will thereupon order the certificate to be openly read; and if the facts mentioned in the certificate are not controverted, or any other valid objection made to the naturalization of such alien, the court will, on the last day of such general sitting, direct that such certificate be filed of record in the court, and thereupon the alien will be admitted and confirmed in all the rights and privileges of British birth, to all intents whatever, as if he or she had been born within the province.

These formalities having been gone through, the alien will be entitled to receive from the court a

certificate of naturalization under the seal of the court and the signature of the clerk thereof. A copy of this certificate may, at the option of the party, be registered in the registry office of any county or registration division within the province, and a certified copy of such registry is sufficient evidence of such naturalization in all courts.

A woman alien married to a natural-born British subject or naturalized alien becomes herself naturalized and entitled to all the rights of a natural-born British subject, without going through any legal formalities whatever.

The justice of the peace who administers the oaths or affirmations of residence or allegiance is entitled to receive a fee of twenty-five cents, and no more; and the clerk of the court, for reading and filing the certificate of residence, and preparing and issuing the certificate of naturalization under the seal of the court, is entitled to receive twenty-five cents, and no more; and the registrar, for recording the certificate of naturalization, is entitled to receive a fee of twenty-five cents, and a further fee of twenty-five cents for every search and certified copy of the same, and no more.

Oath of Residence.

I, A. B., do swear (*or, being one of the persons allowed by law to affirm in judicial cases*, do affirm) that I have resided three years in this province, with intent to settle therein, without having been during that time a stated resident in any foreign country. So help me God.

Oath of Allegiance.

I, A. B., do sincerely promise and swear (*or, being one of the persons allowed by law to affirm in judicial cases*, do affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Province of Canada, dependent on and belonging to the said United Kingdom, and that I will defend her to the utmost of my power against all traitors, conspiracies, and attempts whatever which shall be made against Her Person, Crown, and Dignity; and that I will do my utmost endeavor to disclose and make known to Her Majesty, Her Heirs and Successors, all treasons and traitorous conspiracies and attempts which I shall know to be against Her or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary. So help me God.

CHAPTER XVI.

Of Partnership.

A PARTNERSHIP is an association of two or more persons contributing, in equal or unequal proportions, money, labor, skill, care, attendance, or services in the prosecution of some trade or manufacture, or the accomplishment of any other common object, upon the express or implied understanding that the profit or loss attending the transaction is to be shared among the parties in certain proportions. The contract of partnership is founded wholly on the consent of parties, and may be created by their acts and deeds, and their common participation in the profit and loss of a trade or business, or of a particular speculation or adventure, as well as through the medium of an express contract. If parties are not to share the profit and loss, there can be no partnership as between themselves, whatever may be their apparent situation and position as regards the public. If one man joins another in the furtherance of a particular undertaking, and contributes work and labor, services and skill, towards the attainment of the common object, upon the understanding that the remuneration is to depend upon the realization of profits, so that, if the business is a losing business,

he is to get nothing, he stands in the position of a partner in the undertaking, and not in that of a laborer or servant for hire. But a person who merely receives out of the profits the wages of labor, or a commission as a hired servant or agent, such as a factor, foreman, clerk, or manager, and who has no interest or property in the capital stock of the business, is not a partner in the concern, although his wages may be calculated according to a fluctuating standard and may rise and fall with the accruing profits.

A partner in a private commercial partnership (not being a public joint-stock company with transferable shares) cannot introduce a stranger into the firm as a partner without the consent of all the members of the co-partnership.

Every person who stipulates with another for a share of the profits of a business is a partner in the business as regards the public and third parties, and liable as such, whatever may be the private stipulations and agreements between him and the parties who appear to the world as the managers and conductors of the business, the profits forming a portion of the fund on which the creditors have a right to rely for payment.

A general partnership is one formed for trade or business generally, without limitations; a special partnership is one in which the joint interest extends only to a particular concern, as, for example, in the erection of a hotel; a limited partnership is one in which one or more of the partners put in a certain amount of capital, which is liable for the contracts

of the firm, but beyond that amount the party advancing is not liable.

A person who lends his name as a partner, or who suffers his name to continue in the firm after he has actually ceased to be a partner, is still responsible to third persons as a partner.

A partner may buy and sell partnership effects; make contracts in reference to the business of the firm; pay and receive money; draw and indorse and accept bills and notes; and all acts of such a nature, even though they be upon his own private account, will bind the other partners, if connected with matters apparently having reference to the business of the firm, and transacted with other parties, ignorant of the fact that such dealings are for the particular partner's private account. So also the representation or misrepresentation of any fact made in any partnership transaction by one partner, or the commission of any fraud in such transaction, will bind the entire firm, even though the other partners may have no connection with or knowledge of the same.

Dormant and secret partners, whose names do not appear to the world, may be made responsible for the engagements of a trading firm of which they are members.

Persons may become clothed with the legal liabilities and responsibilities of partners as regards the public and third parties, by holding themselves out to the world as partners, as well as by contracting the legal relationship of partners among themselves. If a man, therefore, allows himself to be published to the world as a member of a particular firm, if he permits

his name to appear in the partnership name or to be used in the business, if he suffers it to be exhibited to the public over a shop-window, or to be written or printed in invoices or bills of parcels or prospectuses, or to be published in advertisements, as the name of a member of the firm, he is an ostensible partner and is chargeable as a partner, although he is not in point of fact a partner in the concern, and has no share or interest in the profits of the business. But if a man's name is used without his knowledge and consent, and he is represented by others to be a partner without his authority or permission, he cannot of course be made responsible as a partner upon the strength of such false and fraudulent representation.

An incoming partner cannot be made responsible for the non-performance of contracts entered into by the firm before he became an actual or reputed member of it.

Dormant and secret partners may release themselves from all further liability by a simple relinquishment of their share in the profit and loss of the business; but, if they are not strictly *secret* as well as dormant partners, notice of the termination of their connection with the co-partnership must be given. A general notice is sufficient as to all but actual customers: these must have some kind of actual notice.

If no time has been limited for the dissolution of a general trading partnership, it is a partnership at will, and may be dissolved at any time at the pleasure of any one or more of the partners. If the partnership was established by deed, the renun-

ciation and disclaimer of it by the party who withdraws from the firm ought to be made by deed. But if the partnership was contracted without deed, or, as it is technically called, by parol, it may be renounced in the same manner. If the partners have agreed that the partnership shall continue for a definite period, it cannot be dissolved before the expiration of the term limited, except on the mutual consent of all the parties, or by the outlawry, felony, or death of any one or more of them, or by the decree of a court of equity. If a partnership for a definite term has been created by deed, the mutual agreement of the parties, to dissolve it, must be by deed also. The partnership is dissolved by the death or insolvency of one of the partners, or by an assignment by any partner of his share and interest in the business. A dissolution by one partner is a dissolution as to all.

An executor, administrator, or personal representative continuing in the business after the death of a partner, is personally responsible as partner for all debts contracted.

Immediately after a dissolution, a notice of the same should be published in the public papers, for general information, and a special notice sent to every person who has had dealings with the firm. If these precautions be not taken, each partner will still continue liable for the acts of the others to all persons who have had no notice of the dissolution.

Under the "Act respecting Limited Partnerships," Const. St. Can. cap. 60, limited partnerships for the transaction of any mercantile, mechanical, or

manufacturing business within the province of Canada may be formed by two or more persons, upon certain terms and conditions; but the provisions of the act are not to be construed to authorize any partnership for the purpose of banking or insurance.

Such partnerships are to consist of one or more persons, called "general partners," and of one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, and who are styled "special partners." General partners are jointly and severally responsible for all debts and engagements of the partnership, in the same manner as ordinary partners in any trade or business; but special partners are not liable for any debts beyond the amounts contributed by them to the capital. All business is to be transacted by the general partners alone, and they only are authorized to sign for and bind the partnership.

Persons desirous of forming a limited partnership must make and sign a certificate which is to contain, firstly, the name or firm under which the partnership is to be conducted; secondly, the general nature of the business intended to be transacted; thirdly, the names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their usual places of residence; fourthly, the amount of capital stock which each special partner has contributed; fifthly, the period at which the partnership is to commence, and the period at which it will terminate.

The certificate is to be in the form given in the act, and which will be found hereafter, and must be signed

by the several persons forming such partnership, before a notary public, who will duly certify the same. The certificate so signed and certified must, in Upper Canada, be filed in the office of the clerk of the county court of the county in which the principal place of business of the partnership is situate, and in Lower Canada in the office of the prothonotary of the district and of the registrar of the county, and is to be recorded by him at large in a book kept for the purpose and open to public inspection.

No partnership will be deemed to have been formed until such certificate has been made, certified, filed, and recorded; and if any false statement be made in such certificate, all the persons interested in the partnership will be liable for all the engagements thereof as *general* partners.

If it is desired to renew or continue the partnership beyond the time originally fixed for its duration, a new certificate must be made, certified, filed, and recorded in the manner required for its original formation; and every partnership otherwise renewed or continued will be deemed a general partnership.

If any alteration be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, it will be deemed a dissolution of the partnership; and every partnership in any manner carried on after any such alteration has been made will be deemed a general partnership, unless renewed as a special partnership in the way above mentioned.

The business of the partnership is to be conducted

under a name or firm in which the names of the general partners, or some or one of them, only shall be used; and if the name of any special partner is used in such firm with his privity, he will be deemed a general partner.

No part of the sum which any special partner has contributed to the capital stock can be withdrawn by him, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum contributed by him, if the payment of such interest does not reduce the original amount of the capital; and if after the payment of such interest any profits remain to be divided, he may also receive his portion of such profits. If, however, it should afterwards appear that by the payment of any interest or profits to any special partner the original capital has been reduced, the partner receiving such interest or profits shall be bound to restore the amount necessary to make good his share of the deficient capital with interest.

Special partners are at liberty at all times to examine into the state and progress of the partnership concerns, and may advise as to their management; but they must not transact any business on account of the partnership, nor be employed for that purpose as agents, attorneys, or otherwise; and if any special partner interferes in that manner, he will be deemed a general partner, and become liable as such.

General partners are liable to account to each

other, and to the special partners, for their management of the concern, in the same manner as partners in any other trade or business.

A limited partnership may be dissolved before the expiration of the term specified in the original certificate, by filing a notice of dissolution in the office in which the original certificate was recorded, and publishing such notice once a week for three weeks in a newspaper published in the county or district where the partnership has its principal place of business, and for the same time in the Canada Gazette.

The fee for filing and recording every certificate is fifty cents.

Partnership Deed.

ARTICLES OF AGREEMENT, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c.

WHEREAS the said parties hereto respectively are desirous of entering into a co-partnership in the business of , at , for the term and subject to the stipulations hereinafter expressed. NOW THEREFORE THESE PRESENTS WITNESS that each of them, the said parties hereto respectively, for himself, his heirs, executors, and administrators, hereby covenants with the other of them, his executors and administrators, in manner following; that is to say:

FIRST. That the said parties hereto respectively shall henceforth be and continue partners together in the said business of , for the full term of , to be computed from the day of ,

one thousand eight hundred and , if the said partners shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

SECOND. That the said business shall be carried on under the firm of .

THIRD. That the said partners shall be entitled to the profits of the said business in the proportions following; that is to say, ; and that all losses in the said business shall be borne by them in the same proportions, unless the same shall be occasioned by the wilful neglect or default of either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise.

FOURTH. That the said partners shall each be at liberty, from time to time during the said partnership, to draw out of the said business, weekly, any sum or sums, not exceeding for each the sum of per annum; such sums to be duly charged to each of them respectively, and no greater amount to be drawn by either of the said partners, except by mutual consent.

FIFTH. That all rents, taxes, salaries, wages, and other outgoings and expenses incurred in respect to the said business, shall be paid and borne out of the profits of the said business.

SIXTH. That the said partners shall keep, or cause to be kept, proper and correct books of account of all the partnership moneys received and paid, and all business transacted on partnership account, and of all other matters of which accounts ought to be kept, according to the usual and regular course of the said

business; which said books shall be open to the inspection of both partners, or their legal representatives. A general balance or statement of the said accounts, stock in trade, and business, and of accounts between the said partners, shall be made and taken on the day of in each year of the said term, and oftener, if required.

SEVENTH. That the said partners shall be true and just to each other in all matters of the said co-partnership, and shall at all times during the continuance thereof diligently and faithfully employ themselves respectively in the conduct and concerns of the said business, and devote their whole time exclusively thereto, and either of them shall not transact or be engaged in any other business or trade whatsoever: And the said partners, or either of them, during the continuance of the said co-partnership, shall not, either in the name of the said partnership, or individually in their own names, draw or accept any bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or wilfully do, commit, or permit any act, matter, or thing, by which, or by means of which, the said partnership moneys or effects shall be seized, attached, or taken in execution; and in case either partner shall fail or make default in the performance of any of the agreements or articles of the said partnership in so far as the same is or are to be observed by him, then the other partner shall represent in writing to such partner offending in what he may be so in default; and in case the same shall not be rectified by a time to be specified for that purpose by the partner so

representing, the said partnership shall thereupon at once, or at any other time to be so specified as aforesaid by the partner offended against, be dissolved and determined accordingly.

EIGHTH. That in case either of the said partners shall die before the expiration of the term of the said co-partnership, then the surviving partner shall, within six calendar months after such decease, settle and adjust with the representative or representatives of such deceased partner, all accounts, matters, and things relating to the said co-partnership; and that the said survivor shall continue to carry on thenceforth, for his sole benefit, the said co-partnership business.

IN WITNESS WHEREOF, the said parties have hereto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered }
in the presence of . }

Partnership Deed.

ANOTHER FORM.

ARTICLES OF AGREEMENT, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN , of the first part, and , of the second part.

WHEREAS the said parties of the first and second part are desirous of becoming partners in their said trade or business of ; AND WHEREAS the said party of the first part hath, by application and assiduity, established a considerable share of business in his profession; AND WHEREAS the said parties of

the first and second part have mutually agreed to enter into co-partnership, and to practise and carry on the profession of as joint practisers, for and during the term of years, if both the said parties shall so long live, to be computed from the date of these presents, subject to the provisions hereinafter contained for determining the said partnership; AND WHEREAS the said party of the second part hath agreed to and with the said party of the first part to pay him on the execution of these presents the sum of , lawful money of Canada (the receipt whereof is hereby acknowledged), in consideration of being admitted into partnership in the said business so acquired as aforesaid, and of being entitled to one-half the profits arising from their joint labor and diligence during the term of years aforesaid.

NOW THEREFORE THESE PRESENTS WITNESS that each of them, the said parties of the first and second part, for himself, his heirs, executors, and administrators, hereby COVENANTS with the other of them, his executors and administrators, in manner following; that is to say:

THAT the said parties of the first and second part shall henceforth be and continue partners together in the trade or business of , for the full term of years, to be computed from the date of these presents, if the said parties shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

THAT the said business shall be carried on under the firm of , in such messuage or house in as from time to time may be agreed upon.

THAT the said parties of the first and second part shall be entitled to the profits of the said business equally, and that all losses happening in the course of the said business shall be borne by them in the same proportion, unless the same shall be occasioned by the wilful neglect or default of either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise.

THAT the expenses of the partnership for rent, maintenance of clerks and apprentices, as well those now employed by the said party of the first part as those which may hereafter be engaged, and all other incidental expenses, shall be paid out of the profits of the business, or equally borne by both parties.

THAT no apprentice, clerk, or servant shall be taken, engaged, or employed in or about the said business by either of the said partners, without the consent of the other of them.

THAT the apprentice fees or premiums to be paid with any apprentice or other person to be received into the service of the said firm during the continuance thereof, shall be considered as the profit of the partner to whom the said apprentice or person shall be articled.

THAT the said party of the first part shall take the charge and management of, and also assist, as far as he conveniently can, in the general business of the office, and in giving instructions to assistants and apprentices.

THAT the said party of the second part shall take charge of all matters appertaining to , and keep the accounts thereof, and give directions and instructions generally to the apprentices and assistants.

THAT the said accounts, heretofore mentioned to

be kept, shall be properly kept in writing; of all moneys received and paid on account of the partnership business, according to the usual and regular course of the said business; and which accounts, together with all deeds, securities for moneys, and papers belonging to the said business, shall be kept where the said business shall be carried on, and not elsewhere, and shall, at reasonable times, be open to the inspection of both the said partners.

THAT the said partners shall be true and just to each other in all their contracts, sales, reckonings, receipts, payments, and dealings, and shall at all times, during the continuance of the said partnership, diligently and faithfully employ themselves respectively in the conduct and management of the said business as heretofore respectively allotted to them.

THAT neither of the said partners shall use the name of the firm to transact any business or enter into any contract or agreement with, or give credit to, any person, or lend or advance any sum or sums of money out of the said partnership funds to any person or persons, after he shall be required by the other of the said partners not to do the same. And that neither of the said partners, without the consent of the other of them, shall, using the name of the firm, draw or accept any bill of exchange, or promissory note, or contract any debt on account of the said partnership, except in the usual and regular course of business of the said partnership and for the benefit thereof.

THAT both parties shall pay into the Bank of all moneys received by them on account of the busi-

ness of the firm, to be placed to the credit of the firm account.

That the several books of accounts, hereinbefore stated to be kept, shall, in the months of and in each and every year during the continuance of the said partnership, or as often as it shall from circumstances be found convenient, be made up between the said parties, so that each of the said parties may be enabled to ascertain the true value of his estate and interest therein and receive the same; which statement shall be final and conclusive, except some manifest error shall appear therein.

That in the case of either of the said partners dying before the expiration of the said partnership, then the surviving partner shall, within six calendar months next after the decease of the partner so dying, settle and adjust with the representative or representatives of the deceased partner all accounts, matters, and things relative to the said partnership up to the day of such decease, giving and receiving such balance as may be due on such settlement to either party.

That on the determination of the said partnership in any way, the office-furniture, books, and other partnership property accumulated during and at the expense of the said firm, shall be equally divided between the said partners, or their representatives.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of .

Dissolution of Partnership.

BY INDORSEMENT.

WE, the undersigned, do hereby mutually agree that the partnership heretofore subsisting between us as Wholesale Grocers, under the within articles of co-partnership, be, and the same is hereby, dissolved, except for the purpose of the final liquidation and settlement of the business thereof; and upon such settlement wholly to cease and determine.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this day of , A. D. 18 .

A. B. [L. S.]
C. D. [L. S.]
E. F. [L. S.]
G. H. [L. S.]

Signed, sealed, and delivered in the presence of X. Z.

NOTICE THEREOF.

NOTICE is hereby given that the partnership heretofore subsisting between us, the undersigned, as Wholesale Grocers, has been this day dissolved by mutual consent. All debts owing to the said partnership are to be paid to A. B., at , and all claims against the said partnership are to be presented to the said A. B., by whom the same will be settled.

DATED at , this day of , A. D. 18 .

A. B.
C. D.
E. F.
G. H.

WITNESS,
X. Z.

NOTICE WHEN BUSINESS TO BE CONTINUED.

NOTICE is hereby given that the partnership heretofore subsisting between us, the undersigned, A. B., C. D., E. F., and G. H., as Wholesale Grocers, was this day dissolved by mutual consent, so far as regards the said A. B. All debts due to the said partnership are to be paid, and those due from the same discharged, at , where the business will be continued by the said C. D., E. F., and G. H., under the firm of "*D. & Co.*"

DATED at , this day of , A. D. 18 .

A. B.
C. D.
E. F.
G. H.

WITNESS,
X. Z.

Limited Liability Certificate.

WE, the undersigned, do hereby certify that we have entered into co-partnership, under the style or firm of B. D. & Co., as (*Grocers and Commission Merchants*), which firm consists of A. B., residing usually at , and C. D., residing usually at , as general partners; and E. F., residing usually at , and G. H., residing usually at , as special partners, the said E. F. having contributed $4000 and the said G. H. $8000 to the capital stock of the said partnership. Which said co-partnership commences on the day of , Anno Domini one thousand eight hundred and ,

and terminates on the day of , Anno Domini one thousand eight hundred and .

DATED this day of , Anno Domini one thousand eight hundred and .

(Signed) A. B.
C. D.
E. F.
G. H.

Signed in the presence of me.
L. M.
Notary Public.

CHAPTER XVII.

Of Promissory Notes.

A PROMISSORY NOTE may be defined to be a promise or engagement in writing to pay a specified sum of money, at a time therein limited, or on demand, or at sight, to a person therein named, or his order, or to the bearer.

Form of a Promissory Note.

Toronto,[1] 1 January, 1864.[2]

$100.00.[3]

Two months after date,[4] I promise to pay[5] to C. D. (*the payee*),[6] or order,[7] at the City Bank, Toronto,[8] the sum of one hundred dollars,[9] value received.[10]

A. B. (*the maker*).[11]

[*Indorsed*] C. D. (*first indorser*). E. F. (*second indorser*).[12]

REMARKS ON THIS FORM.

(1) The place at which the note is dated or supposed to be made.
(2) The date of the note.
(3) The sum superscribed in figures.
(4) The time when payable.
(5) "I promise to pay."
(6) To whom payable.
(7) Or order.
(8) The place where mentioned in the body to be payable.
(9) The sum payable.
(10) Value received.
(11) The maker.
(12) The form of the indorsements.

1. The *Place* at which the Note is dated or supposed to be made.

The observations we have made on the corresponding part of a bill of exchange equally apply here.

2. The *Date* of the Note.

The remarks before made on the date of a *Bill* are equally applicable to the date of a Note.

3, 4. See the observations (*ante*, 4 and 5) on the corresponding parts of a bill of exchange.

5. "*I promise to pay.*"

No particular or precise form or set of words is necessary to constitute a valid promissory note. Neither the word *promise* nor the word *pay* is indispensable; but there must be equivalent expressions.

But there must be words importing a *promise* to pay. A mere "I. O. U." such a sum, is not, therefore, valid as a promissory note.

Where a note is signed by several persons as makers, it is usually joint and several, so as to give the holder a right of action against all of them jointly, or each separately, at his election; although of course the note is satisfied by being once paid by all or either of the parties. The words then are, "We jointly and severally promise," &c. But where a note began, "I promise," &c., and was signed by several makers, it was held, the note was several as well as joint.

If a note purport to be made, and be signed, by *A.* only, *B.* cannot be sued *thereon*, although he was, jointly with *A.*, liable for the debt for which the note was given. But if a note begin, "I promise to pay," &c., and *A.* and *B.* be partners in trade, and *A.* sign the note as *for himself and B.*, on the face of the instrument, the note is several against *A.* and joint against the firm.

6, 7. See the observations (*ante*, 6, 7) on the corresponding parts of a bill of exchange, and which are equally appropriate to the case of a promissory note.

8. *The place where mentioned in the body of the Note to be payable.*

The place of payment need not be stated in the body or other part of the note.

But where the maker desires that he should not be responsible unless presentment for payment has been previously made at a particular house or bank, at which he intends that the money should be ready, he should introduce these words in the *body* of the instrument, adding after them, "and not otherwise or elsewhere." By so doing he will render a presentment for payment at the specified place essential to complete his liability.

9. *The sum payable;* and 10, The words "value received." It is only necessary to refer to the remarks made on these parts of a bill.

11. *The Maker.*

Nor is there any thing to distinguish the form of the signature of the maker of a note from that of the drawer's signature to a bill. We may here again advert to the cases relative to the effect of the signature to a note by or for several makers, where the note begins, "I promise to pay," &c. If the maker, instead of subscribing his name, address the note to himself, and then write "accepted" across it, and sign his name thereto, the instrument may be treated as a note.

12. The Form of the Indorsements.

The law on this subject affecting notes is the same as in the case of bills.

CHAPTER XVIII.

Of Patents.

A PATENT is the name usually given to a grant from the Crown, by letters-patent, of the exclusive privilege of making, using, exercising, and vending some new invention. The granting of such letters-patent is an ancient prerogative of the Crown,—a prerogative which was stretched far beyond its due limits in the reign of Queen Elizabeth and her successor, and the monopolies thus created formed one of the grievances which King James was at last obliged to remedy.

The granting of patents *for inventions*—to which our attention will be confined—is now regulated by the "Act respecting Patents for Inventions," Cons. St. Can. cap. 34.

Any British subject resident in Canada, being the discoverer or inventor of any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereon, may obtain a patent therefor, which will secure to him the exclusive property therein for a period of fourteen years

from the granting of the patent. This exclusive right may, on certain conditions, be extended for a further period of seven years. Similar rights may also be obtained by the inventor or producer of any new or original design for a manufacture of metal or other material, or for the printing of woollen, silk, cotton, or other fabrics, or of any new or original design for a bust, statute, or *bas relief*, or composition in *alto* or *basso relievo*, or any new or original impression or ornament in marble or other material, or any new or useful pattern, or print, or picture, to be either worked into, or worked on, or printed, or painted, or cast, or otherwise fixed, on any article of manufacture.

The application for a patent must be made by petition to the Governor-General. The art, &c., in respect of which the patent is desired must have been unknown and unused in the province before the petitioner discovered, invented, designed, or produced it. The fact of a patent having issued for the same invention in a foreign country will not, however, deprive the original and true inventor of the right to a patent in this province.

Before receiving a patent, the inventor must make a declaration that he verily believes that he is the true inventor or discoverer of the art, machine, or improvement for which he solicits a patent. This declaration may be made before a justice of the peace, or, when the applicant is not residing in the province, before any minister plenipotentiary, *charge-d'affaires*, consul, or agent of Great Britain, or notary public of the country in which such appli-

cant happens to be at the time of making the same. He must deliver a written description or specification *in duplicate* of his invention or improvement, and of the manner or process of compounding the same. This specification must be full, clear, and exact in its terms, so as to distinguish the invention from all other things before known, and to enable any person skilled in the art or science of which it is a branch, or with which it is most nearly connected, to make, compound, and use the same. In the case of a machine, he must fully explain the principle and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions. He must accompany the whole with drawings and written references, *made in duplicate*, where the nature of the case admits of drawings, or with specimens of the ingredients, or of the composition of matter, sufficient in quantity for the purpose of experiment. The description or specification must be signed by himself, and attested by two witnesses, and filed in the office of the Minister of Agriculture. Whenever the case admits of drawings, the same must be furnished in duplicate, one to be deposited in the office of the Minister of Agriculture, and the other annexed to the patent and to be considered a part of the specification thereof; and a copy of the specification will, in all cases, be annexed to the patent. When the patent is for a machine, the inventor must deliver a model of such machine to the Minister of Agriculture, if he deems such model to be necessary.

Before a patent can be available to a patentee, it

must be recorded in a book to be kept for that purpose in the office of the Minister of Agriculture. As soon as recorded, it is to be delivered to the patentee, or his order.

The rights and privileges granted to inventors and discoverers under the Patent Act are extended to any British subject resident in Canada, who, whilst travelling in any foreign country, may have discovered or obtained a knowledge of any new and useful art, machine, manufacture, or composition of matter not known or not in use in Canada; but inventions and discoveries made or used in the United States, or any of the British dominions in Europe or America, are protected.

A person desiring to introduce into Canada any invention discovered by him in a foreign country must, previous to obtaining a patent for the same, make a solemn declaration, in the manner prescribed in the case of inventors and discoverers, that he believes himself to be the first introducer or publisher of such invention, art, machine, manufacture, or composition of matter in Canada, and that he discovered or obtained a knowledge thereof while on his travels in some foreign country, not being one of the United States of America, or any of the British dominions in Europe or America.

Patents are assignable, either in whole or in part, and the patentee may grant to any person the exclusive right to use and sell the patented invention or discovery in any county or other locality. Assignments and grants of exclusive rights must be in writing, and must be recorded in the office of the Minis-

ter of Agriculture within two months from the execution thereof. When an assignment is made before the issuing of the patent, it may issue to the assignee.

When an inventor or discoverer dies before obtaining a patent for his invention or discovery, the right to such patent will devolve on his executor or administrator, or other legal personal representative; but they will take such patent in trust for the *heir-at-law* of the deceased, if he died intestate.

If two persons apply for a patent for the same invention or discovery, the application will be submitted to the arbitration of three skilled persons, one to be chosen by each of the applicants, and the third by the Minister of Agriculture. The decision of the arbitrators or any two of them is to be final. If either applicant refuses or fails to choose an arbitrator when required so to do by the Minister of Agriculture, the patent will issue to the opposite party; and when there are more than two interfering applicants, and the parties applying do not all unite in appointing three arbitrators, the Minister of Agriculture may appoint the three.

Patents may be renewed and extended for seven years. The application for extension must be made in writing to the Governor-General, and the grounds upon which the application is based must be set forth, and notice of the application must be published three times each in the Canada Gazette and in two other newspapers published in the English and French languages in that section of the province in which the applicant resides. The notice must state the time when the application will be made, so that

any person may appear and show cause why the extension should not be granted.

The application will be heard before a Board, composed of the President of the Council, the Attorney-General for that part of the province in which the applicant resides, and the Finance Minister, who will sit for that purpose at the time designated in the published notice at the Bureau of Agriculture. The patentee must make a statement upon oath of the ascertained value of the invention, and of the receipts and expenditure in detail, exhibiting a true and faithful account of the loss or profit in any manner accruing from the same; and if upon the hearing of such application it appears to the Board, having due regard to the public interest, that the term ought to be extended by reason of the patentee, without fault on his part, having failed to obtain from the use and sale of his invention a reasonable remuneration for the time, ingenuity, and expense bestowed thereon, and in the introduction thereof into use, the patent will be extended for seven years; but no extension will be granted after the expiration of the term sought to be extended, nor unless the petition or application therefor be presented six months at least before the expiration of such term.

Whenever a patent becomes inoperative or invalid by reason of some accidental error in the description or specification, the patent may be surrendered, and a new one issued.

If by accident or mistake the patentee has made his specification too broad, and has claimed to be the inventor or discoverer of more than that of which he

was in fact the first inventor, he may disclaim, as to those parts of which he was not the first inventor, by a writing signed by him, and attested by one witness, and recorded in the office of the Minister of Agriculture.

A person infringing patent rights is liable to an action for damages and to the payment of treble costs.

All patented articles must bear stamped or engraved upon them the date of the patent thereof; and any person neglecting this regulation will be deemed guilty of a misdemeanor, and will be liable to fine or imprisonment, or both, at the discretion of the court.

The fees payable on taking out a patent are twenty dollars, which must be paid when the application is first made.

Petition for Patent.

To His Excellency the Right Honorable CHARLES STANLEY, VISCOUNT MONCK, *Governor-General of British North America, &c. &c. &c.*

THE HUMBLE PETITION of A. B., of , &c. &c., SHEWETH:

That your petitioner has invented a new and improved Thrashing-Machine, which he truly believes has not been known or used in the province of Canada prior to the invention thereof by your petitioner; and that the same is not now in public use or on sale in the said province with your petitioner's consent and allowance.

Your petitioner therefore humbly prays that letters-

patent under the great seal of the Province of Canada may issue to your petitioner, granting to him, his heirs, lawful representatives and assigns, for the period of fourteen years, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention.

And your petitioner will ever pray, &c.

(Signed) A. B.

Specification.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, A. B., of , &c. &c., have invented a new and useful machine for thrashing grain [*stating the use and title of the machine; and if the application is for an improvement, it should read thus:* a new and useful improvement on a (*or*, on the) machine, &c.], and I do hereby declare that the following is a full, clear, and exact description of the construction and operation of the same; reference being had to the annexed drawings, making a part of this specification, in which figure 1 is a perspective view; figure 2, a longitudinal elevation; figure 3, a transverse sections, &c. [*thus describing* all the sections of the drawings, and referring to the parts by letters. Then should follow the *description of the construction and operation of the machine, and the principle upon which it is formed, and the several modes in which the inventor has contemplated the application of that principle or character by which it may be distinguished from other inventions;* and, lastly, the *claim*, which should express the nature and character of the invention, and identify the parts claimed separately

or in combination. If the specification is for an *improvement* the original invention thereof should be disclaimed, and the claim confined to the improvement.]

WITNESS my hand, this day of , A. D. 18 .

A. B.

Signed in the presence of }
C. D., of .
E. F., of .

Declaration.

County of , }
to wit: }

I, A. B., of , do solemnly and sincerely declare that I verily believe that I am the true inventor or discoverer of the [Thrashing-Machine, *or as the case may be*] for which I am now soliciting a patent, and that I do not know or believe the same to have been ever before known or used in the Province of Canada.

A. B.

Declared before me, at , }
in the county of , this }
day of , A. D. 18 .

C. D.

J. P. for the said county.

Surrender for Re-issue.

To His Excellency the Right Honorable CHARLES STANLEY, VISCOUNT MONCK, *Governor-General of British North America, &c. &c. &c.*

THE HUMBLE PETITION of A. B., of, &c. &c., humbly sheweth:

That your petitioner did obtain letters-patent under the great seal of the Province of Canada for a new thrashing-machine, which letters-patent are dated the day of , A. D. 18 .

That your petitioner now believes that the same letters-patent are inoperative, or invalid, by reason of a defective description or specification, which defect has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention.

Your petitioner therefore humbly prays that he may be allowed to surrender the said letters-patent, and that new letters-patent may issue to him for the same invention for the residue of the period for which the original patent was issued, in accordance with the corrected description and specification herewith presented.

And your petitioner will ever pray, &c.

(Signed) A. B.

(*A corrected specification and declaration must accompany this petition.*)

Disclaimer.

KNOW ALL MEN by these presents, That I, A. B., of, &c. &c., to whom letters-patent under the great

seal of the Province of Canada, for a new thrashing-machine, did issue on the day of , A. D. 18 , did by mistake, accident, or inadvertence, and without any wilful default, or intent to defraud or mislead the public, make my specification of claim too broad, claiming more than that of which I was the original or first inventor,—some material and substantial part of the said thrashing-machine being, nevertheless, truly and justly my own invention [*or*, claiming to be the original and first inventor or discoverer of a material and substantial part of the said thrashing-machine, of which I was not the first and original inventor, and which I have no legal or just right to claim]. NOW KNOW YE, That I, the said A. B., do hereby disclaim that part of the specification and claim which is in the following words, to wit: [*Insert here that part which is disclaimed, in the words of the original. State also the extent of the interest which the disclaiming party has in the patent, whether an entire or partial interest.*]

WITNESS my hand, this day of , A. D. 18 .

A. B.

Signed in the presence of
C. D., of, &c. &c.

Petition for Patent for Design.

To His Excellency the Right Honorable CHARLES STANLEY, VISCOUNT MONCK, *Governor-General of British North America, &c. &c.*

THE HUMBLE PETITION of A. B., of, &c., SHEWETH:

That your petitioner has invented or produced a

new and original design for a bust (*or as the case may be*), which he truly believes has not been known or used in the Province of Canada prior to the invention thereof by your petitioner.

Your petitioner therefore humbly prays that letters-patent under the great seal of the Province of Canada may issue to your petitioner, granting to him, his heirs, lawful representatives, and assigns, for the period of fourteen years, the exclusive property or right therein, to make, use, sell, and vend the same, or copies of the same, to others, to be by them made, used, sold, or vended.

And your petitioner will ever pray, &c.

(Signed) A. B.

(*The petition must be accompanied by a specification and declaration, in the form already given, which may be altered to suit the circumstances.*)

Assignment of an Entire Interest in a Patent.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c. &c., SENDS GREETING:

WHEREAS the said A. B. has invented a certain thrashing-machine, and has applied for and obtained letters-patent under the great seal of the Province of Canada, granting to him and to his assigns the exclusive right to make and vend the same; which letters-patent are dated on the day of , A. D. 18 .

AND WHEREAS C. D., of, &c. &c., has agreed to purchase from the said A. B. all the right, title, and interest which he, the said A. B., now hath in the said

invention under the said letters-patent, for the price or sum of dollars.

NOW THESE PRESENTS WITNESS that for and in consideration of the said sum of dollars, by the said C. D. paid to the said A. B. at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), he, the said A. B., hath assigned and transferred, and by these presents doth assign and transfer, unto the said C. D., his executors, administrators, and assigns, the full and exclusive right to the invention made by him, and secured to him by the said letters-patent, together with the said letters-patent, and all his interest therein or right thereto.

IN WITNESS WHEREOF, the said A. B. hath hereunto set his hand and seal, this day of , A. D. 18 .

A. B. [L. S.]

Signed, sealed, and delivered in the presence of

X. Y.

(*An assignment of a partial interest may be readily framed from the foregoing.*)

CHAPTER XIX.

Of Receipts and Releases.

A RECEIPT is an acknowledgment in writing that the party giving the same has received from the person therein named the money, or whatever may be specified in the receipt.

A creditor receiving money from his debtor is not *bound* to give a receipt therefor, although it is usual to do so. If the debtor wants a receipt, he ought to have one ready-written for the creditor to sign, and should be provided with pen and ink for the use of the creditor. But, although it may be *legal* for a creditor to refuse to give a receipt for money paid to him, it would be very unfair, and legal rights should in such cases be waived, unless there be some good reason for acting strictly.

A receipt in full of all demands is only *prima facie* evidence of what it purports to be. Evidence may be given to show that it was obtained by fraud, or given by mistake or in ignorance of law; so that, if such a receipt be given unintentionally, and without a knowledge of all the facts, the whole debt, or so much of it as may remain unpaid, may yet be recovered, notwithstanding the giving of such receipt.

A release is the discharge of a right of action which a man has or may claim against another, and

is commonly given where parties have had numerous dealings together, and, on closing up their connection, give and take mutual discharges. There is this difference between a receipt and a release, that if a receipt be given *in full*, as we have seen, the whole debt being in fact not paid, the unpaid portion may, under certain circumstances, be recovered; whereas if a release be given, it, being under seal, operates as a total discharge, notwithstanding a very small portion, or, indeed, none at all, of the debt may have been paid.

Receipt for Rent.

LONDON, C. W., 1st Sept., 1863.

Received from Mr. John Smith the sum of one hundred dollars, for half-year's rent of store on Dundas Street, due this day.

$100\frac{00}{100}$. ROBERT JONES.

Receipt in Full.

Received the day of , A.D. 18 , from Mr. William Brown, the sum of fifty dollars, in full of all demands.

$50\frac{00}{100}$. HENRY PIPES.

Receipt on Account.

STRATFORD, C. W., 12th Oct., 1863.

Received from Mr. Thomas Hintoff the sum of ninety-six dollars and fifty cents, on account of purchase-money of horse and buggy sold to him this day.

$96\frac{50}{100}$. WILLIAM PURCELL.

Receipt to Executor.

Received, the day of , A. D. 1863, from Joseph Creighton and William Thomson, Esquires, executors of the last will and testament of Aaron Creighton, deceased, the sum of one thousand dollars, in full of all demands against the estate of the said Aaron Creighton.

$1000_{\frac{00}{100}}$. JOHN HUNTINGDON.

Release of all Demands.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , BETWEEN A. B., of, &c., of the first part, and C. D., of, &c., of the second part.

WHEREAS there have been divers accounts, dealings, and transactions between the said parties hereto respectively, all of which have now been finally adjusted, settled, and disposed of, and the said parties hereto have respectively agreed to give each other the mutual releases and discharges hereinafter contained, in manner hereinafter expressed.

NOW THEREFORE THESE PRESENTS WITNESS that in consideration of the premises and of the sum of five shillings of lawful money of Canada to each of them, the said parties hereto respectively, paid by the other of them, at or before the sealing and delivery hereof (the receipt whereof is hereby acknowledged), each of them, the said parties hereto respectively, doth hereby, for himself and herself respectively, his and her respective heirs, executors, administrators, and assigns, remise, release, and forever acquit and discharge the other of them, his and her heirs, execu-

tors, administrators, and assigns, and all his, her, and their lands and tenements, goods, chattels, estate, and effects respectively, whatsoever and wheresoever, of and from all debts, sum and sums of money, accounts, reckonings, actions, suits, cause and causes of action and suit, claims and demands whatsoever, either at law or in equity, or otherwise howsoever, which either of the said parties now have or has, or ever had, or might or could have, against the other of them, on any account whatsoever, of and concerning any matter, cause, or thing whatsoever between them, the said parties hereto respectively, from the beginning of the world down to the day of the date of these presents.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

A. B. [L.S.]
C. D. [L.S.]

Signed, sealed, and delivered in the presence of
X. Z.

CHAPTER XX.

Of Wills and Intestacy.

A WILL is the instrument by which the owner of property declares the mode in which he desires that property to be disposed of after his death. When a man makes a will, he is called a testator; and when a woman makes a will she is called a testatrix. When movable property is given by will, it is said to be *bequeathed*, and the property given is called a *legacy;* on the other hand, when land is given, it is said to be *devised*, and the property given is called a *devise.* The person taking a legacy is called a *legatee;* but he to whom land is given is called a *devisee.*

Any person of sound mind may make a will; but the will of a married woman is subject to some restrictions, to be noticed presently. No person under the full age of twenty-one years can make a will of lands, but a will of personalty may be made by males at the age of fourteen, or by females at the age of twelve, *if of sufficient discretion.* What may amount to *sufficient discretion* cannot be defined here: it must remain for the decision of the proper tribunal, whenever a will is impeached on that ground. The right to dispose of landed property by will was first given by an act of Parliament called the Statute of Wills, passed in the

reign of Henry VIII. Personal or movable property was always subject to such a disposition, but not to its present extent. Anciently, by the general common law, a man who left a wife and children could not deprive them by his will of more than one equal third part of his personal property; if, however, he left a wife and no children, or children and no wife, he was then enabled to dispose of one-half, leaving the other half for the wife, or for the children. At the present day, however, there is no such limitation. A man may, if sufficiently devoid of all natural affection, bequeath the whole of his property to strangers, and leave his wife and children penniless.

All wills require to be in writing, except the wills of soldiers, made when on actual military service, and of seamen, when at sea. A will of lands must not only be in writing, but must also be *signed* by the testator or testatrix, in the presence of *two* witnesses; and these two witnesses must subscribe their names in the *presence* of each other. A will of movable or personal property does not require the same formalities, although in practice it is usual to observe them. It is neither necessary that the writing should be signed, nor, as a consequence, that it should be witnessed. A writing, however, it *must* be, though it does not require signing or attesting. If a man should give instructions to his lawyer to prepare his will, and those instructions are in writing, or a *draft will* prepared from them, it is sufficient. Such a writing operates as a will of movables, although it may be informally drawn up and neither signed nor attested. Notwithstanding, however, that such is the

case, it is highly desirable that all wills should be signed and attested, if for no other reason, yet for this,—that a will so signed and attested is more susceptible of easy and satisfactory proof.

In every will of personality there should be an appointment of some person or persons as executor or executrix. Any person may be appointed; but if an infant—that is, a person under twenty-one—be appointed, he will not be allowed to exercise his office during his minority; but during this time the administration of the goods of the deceased will be granted to the guardian of the infant, or to such other person as the surrogate court may think fit. If a married woman should be appointed an executrix, she cannot accept the office without the consent of her husband; and, having accepted it, with his consent, she is unable, without his concurrence, to perform any act of administration which may be to his prejudice; for, as the general rule of law is that a husband and wife are but one person, the power, and, with it, the responsibility, are vested in the husband.

There is this difference between a will of lands and a will of personal property. Under the former, the devisee, or person to whom the land is given, takes the land direct, without the intervention of any executor; while, on the other hand, a legatee of personal property can only get the same through the executor. The moment a testator dies, the executor becomes entitled to the possession of the whole of the personal property, and is bound to see that all the testator's debts are paid, before he pays a

single legacy, or parts with any of the property to the legatees to whom it may be given.

Before an executor can act, he must get himself lawfully clothed with the necessary authority. This he does by *proving* the will. Wills must be proved in the surrogate court of the county where the testator had, at the time of his death, his fixed place of abode; and if he had no fixed place of abode in, or resided out of, Upper Canada, at the time of his death, then in the court of any county in which he had any personal or landed property. The first thing, then, for an executor to do is, to take the will to the clerk of the surrogate court, who is generally the same individual as the clerk of the county court; there the necessary affidavits and documents will be filled up and the will proved in due form. A surrogate clerk will be found in every county town.

When the will has been proved, it is the duty of the executor to pay the testator's debts out of the personal estate, to which such executor becomes entitled by virtue of his office. For this purpose the executor has reposed in him by the law the fullest powers of disposition over the personal estate of the deceased, whatever may be the manner in which it has been bequeathed by the will. When the debts have been paid, the legacies left by the testator are then to be discharged. In order to give the executor sufficient time to inform himself of the state of the assets and to pay the debts of the deceased, he is allowed a twelvemonth from the date of the death of the testator, before he is bound to pay any legacies. Notwithstanding the lapse of a year from the tes-

tator's death, the executor is still liable to any creditor of the deceased to the amount of the property which may have come to the executor's hands; and if he should have paid any legacies in ignorance of the claims of the creditor, his only remedy is to apply to the legatees to refund their legacies, which they will be bound to do, in order to satisfy the debt. From this liability to creditors an executor cannot be discharged, unless he throw the property into chancery, in which case the court undertakes the administration, and the executor is consequently exonerated from all risk. The executor, however, is of course not answerable to the testator's creditors beyond the amount of property which has come to his hands, unless he should, for a sufficient consideration, have given a written promise to pay personally, or should do any act amounting to an admission that he has property of the testator sufficient for the payment of the debts.

After payment of the testator's debts and legacies, the residue of his personal estate must be paid over to the residuary legatee, if any, named in the will; and if there be no residuary legatee, then to the testator's next of kin.

When a person dies without making a will, he is said to die intestate, and his property is then distributed according to the provisions of the acts of Parliament passed to regulate such matters. The lands of a person dying intestate descend first to all his children, sons and daughters, equally, and if any child should be dead leaving children, these grandchildren will stand in their parent's place,

and be entitled to the share which would have fallen to their parent had such parent been alive. Failing children, the lands will go to the intestate's father; and if the father be dead, then to the mother; and if the mother be dead, then to the brothers and sisters and collateral relatives. If, however, the land came to the intestate in right of his mother, then upon his death without children such land will revert to the mother if living, and if dead, to the father for life, and then to the brothers and sisters.

We have not pretended to give the whole law of descent of real property: we have only given an outline of the way in which land of an intestate will go in an ordinary and simple case. It would be useless to do more, and would swell the limits of this work far beyond our design. The law of descent of real property is much too intricate to warrant any attempt to popularize it.

The application of an intestate's personal property, after payment of all his debts, is now regulated by statutes of the reign of Charles II. and James II., commonly called the Statutes of Distribution, by which statutes the rights of the relations of the deceased appear to have been first definitely ascertained and rendered legally available. Under these statutes, if the intestate leave a widow and any child or children, the widow shall take a third part of the surplus of his effects. If he leave no child or descendant of a child, she takes one-half. If the intestate leave children, two-thirds of his effects if he leave a widow, or the whole if he leave no widow,

shall be equally divided among his children, or, if but one, to such child. If the intestate leave no children or representatives of them, his father, if living, takes the whole; or, if the intestate should have left a widow, then one-half. If the father be dead, the mother, brothers, and sisters of the intestate shall take in equal shares, subject, as before, to the widow's right to a moiety. If there be no brother or sister, th mother shall take the whole, or, if the widow be living, a moiety only, as before; but a stepmother can take nothing. The children of brothers or sisters who are dead stand in their parent's place.

If a married woman is possessed of property, real or personal, in her own separate right, she may dispose of the same by her will to or among her children, and, failing children, then to her husband. Such will must be in writing, and signed by the testatrix in the presence of two witnesses, neither of whom, however, must be the husband. The separate personal property of a married woman dying intestate is to be distributed in the same proportions between her husband and children as the personal property of a husband dying intestate is to be distributed between his wife and children.

When a person dies intestate, any of the next of kin may obtain letters of administration from the surrogate court, which will clothe the party obtaining such letters with the same authority that an executor has. An administrator's duties and liabilities are precisely the same as those of an executor, so that it is unnecessary to refer to them again.

A codicil is a supplement or addition made to a will by the testator, to be taken as part of the same,—being intended for its explanation or alteration, or to make some addition to, or subtraction from, the former disposition of the testator. It should be executed in the same manner and with the same formality as the original will.

No precise form of words is essential to the validity of a will; but great care should be exercised that the wishes of the testator are clearly expressed in proper terms.

Wills are revoked by the marriage of the testator or testatrix, and by subsequent wills and codicils, so far as such subsequent wills and codicils are inconsistent or incompatible with the original will.

Short form of Will.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of, &c. &c., made this day of , in the year of our Lord one thousand eight hundred and , as follows:

I GIVE, DEVISE, AND BEQUEATH all my messuages, lands, tenements, and hereditaments, and all my household furniture, ready money, securities for money, money secured by life assurance, goods and chattels, and all other my real and personal estate and effects whatsoever and wheresoever, unto C. D., his heirs, executors, administrators, and assigns, TO and for his and their own absolute use and benefit, according to the nature and quality thereof respectively; SUBJECT only to the payment of my just debts, funeral and testamentary expenses, and the charges

of proving and registering this my will. And I appoint E. F., of , executor of this my will; And hereby, revoking all other wills, I declare this only to be my last will and testament.

In Witness Whereof, I have hereunto set my hand and seal, the day and year above written.

A. B. [L. S.]

Signed, sealed, published, and declared by the said A. B., the testator, as and for his last will and testament, in the presence of us, who at his request, and in the presence of each other, have hereunto subscribed our names, as witnesses to the due execution thereof.

R. S.
X. Z.

General form of a Will disposing of Real and Personal Estate, in Legacies.

I, T. T., of , in the county of , gentleman, being in good health [*or* in ill health, *as the case may be*] and of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made.

First. I hereby constitute and appoint my wife, E. T., to be sole executrix of this my last will, directing my said executrix to pay all my just debts and funeral expenses, and the legacies hereinafter given, out of my estate.

Second. After the payment of my said debts and funeral expenses, I give to each of my children the sum of dollars, to be paid to each of them as soon after my decease, but within one year, as conveniently may be done.

Third. And for the payment of the legacies aforesaid, I give and devise to my said executrix all the personal estate owned by me at my decease (except my household furniture and wearing-apparel), and so much of my real estate as will be sufficient, in addition to the said personal estate herein given, to pay the said legacies.

Fourth. I give to my said executrix all my household furniture and wearing apparel, for her sole use.

Fifth. I devise to my said executrix all the rest and residue of my real estate, as long as she shall remain unmarried, and my widow, with remainder thereof, on her decease or marriage, to my said children and their heirs respectively, share and share alike.

In Witness Whereof, I hereunto set my hand and seal, this day of , in the year of our Lord one thousand eight hundred and .

T. T. [L. S.]

Signed, sealed, published, and declared by the said T. T., as and for his last will and testament, in the presence of us, who in the presence of each other, and at his request, have subscribed our names as witnesses hereto.

X. Z.

R. S.

Codicil to a Will.

THIS is a codicil to the last will and testament of me, A. B., of, &c. &c., bearing date the day of A. D. 18 (*the date of the will*).

I do hereby revoke the bequest of all my household furniture to my son John, and do give and bequeath the same to my daughter Jane, to and for her own absolute use and benefit forever.

I give and bequeath to my daughter Mary, in addition to the legacy bequeathed to her by my said will, the further sum of $400.

In all other respects I do confirm my said will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of , A. D. 18 .

A. B. [L. S.]

Signed, sealed, published, and declared by the said A. B., the testator, as and for a codicil to his last will and testament, in the presence of us, who at his request, and in the presence of each other, have hereunto subscribed our names as witnesses to the due execution hereof.

R. S.

X. Z.

CHAPTER XXI.

Insolvent Act.

THIS act applies in Upper Canada to all persons, whether traders or non-traders.

Of Voluntary Assignments.

Any person unable to meet his engagements, and desirous of making an assignment of his estate, may call a meeting of his creditors at his usual place of business, or, at his option, at any other place which may be more convenient for them; and such meeting shall be called by advertisement (*form* "A" *hereto annexed*), stating in such advertisement the object of such meeting; and at such meeting he shall exhibit statements showing the position of his affairs, and particularly a schedule (*form* "B" *hereto annexed*) containing the names and residences of all his creditors, and the amount due to each, distinguishing between those which are overdue, or for which he is directly liable, and those for which he is only liable indirectly as indorser, surety or otherwise, and which have not become due at the date of such meeting, and also the particulars of any negotiable paper bearing his name, the holders of which are unknown to him: the schedule is to be sworn to by the insolvent and may be corrected by him under oath at the meeting: and he

shall also produce his books of account if required to do so by any creditors. Notice of meeting to be sent by post. At the meeting an assignee may be appointed by the creditors, and if a vote is taken each creditor shall only represent in such vote the amount of direct liabilities of the insolvent to him: and the insolvent shall make an assignment of his estate and effects to the assignee so chosen.

If no assignee be appointed by the creditors at such meeting, or at any adjournment thereof, the insolvent may assign his estate to any solvent creditor resident within this province, not related to him, and being a creditor for a sum exceeding $500; or if he has no such creditor for so large a sum who will accept such assignment, then he may assign to the creditor, otherwise competent and willing to accept, representing the largest claim upon him; or he may assign to any official assignee resident within the county within which insolvent has his place of business. In case of any dispute at the first meeting of creditors as to the amount which any one creditor is entitled to represent in the nomination of an assignee at such meeting, such dispute shall be decided by the votes of the majority in number of the creditors present, or represented by agents or proxies; but no neglect or irregularity in any of the proceedings antecedent to the appointment of the assignee shall vitiate an assignment subsequently made to an assignee competent to receive it under the act.

The deed of assignment may be in the form "C," and be executed in duplicate, and shall convey and vest in the assignee all vouchers, accounts, letters and other pa-

pers and documents relating to his business, except only such as are exempt from seizure and sale under execution; a duplicate thereof shall be forthwith deposited in the office of the proper court, and a list of creditors shall accompany the deed so deposited.

If the insolvent possesses real estate the deed of assignment may be enregistered in the Registry Office for the county in which such real estate is situate.

Compulsory Liquidation.

A debtor shall be deemed insolvent and his estate shall become subject to compulsory liquidation if he absconds, or is immediately about to abscond, from this province with intent to defraud any creditors, or to defeat or delay the remedy of any creditor, or to avoid being arrested or served with legal process, or if being out of the province he so remains with a like intent, or if he conceals himself within this province with a like intent, or if he secretes any part of his estate and effects with intent to defraud his creditors or to defeat their demands, or if he assigns, removes, or disposes of any of his property with intent to defraud, defeat, or delay his creditors, or if with such intent he has procured it to be seized in execution, or if he has been imprisoned in a civil action, or if he wilfully neglects or refuses to appear on any rule or order requiring his appearance to be examined as to his debts, or to obey orders for payment of his debts, or any decree in Chancery for payment of money, or assigning generally, except under the said act. If a trader ceases to meet his commercial liabilities generally as they become due,

any two or more creditors for sums exceeding in the aggregate five hundred dollars may make a demand upon him requiring him to make an assignment of his estate for the benefit of his creditors.

If the trader contends that the claims of such creditors do not together amount to five hundred dollars, or that the stoppage of payment was only temporary, Judge to decide. If such petition be rejected or none presented, liquidation to be compulsory, but proceedings must be taken within three months. In case any creditor, by affidavits of himself or any other individual, shows to the satisfaction of the Judge that he is a creditor of the insolvent for a sum of not less than two hundred dollars, and also shows, by the affidavit of two creditable persons, such facts and circumstances as satisfy such Judge that the debtor is insolvent and that his estate has become subject to compulsory liquidation, such Judge may order the issue of a writ of attachment against his estate and effects, addressed to the sheriff of the county in which such writ issues, requiring such sheriff to seize and attach his estate and to summons him to appear before the court within such time as is usual therein, which writ shall be accompanied by a declaration setting forth such facts and circumstances as are necessary to be proved to maintain the issue thereof.

Immediately upon issue of writ the sheriff shall give notice by advertisement, and shall seize all the estate of the insolvent, and shall return the writ with a report under oath of his action thereon, and shall place the estate attached in the hands of the official

assignee, when he is appointed, who shall make an Inventory and file the same in Court on the return day of the writ.

Of Assignees.

The Board of Trade at any place may name official assignee, and shall declare what security shall be given, and a copy of the resolution certified by the Secretary of the Board shall be transmitted to the Clerk of the Court in the county within which assignee resides. The assignee shall call meetings of creditors whenever required in writing so to do by five creditors or by the Judge, or whenever he shall require instructions from the creditors, and he shall be subject to all rules, and shall deposit weekly at interest, in the name of the estate, all moneys received by him in the bank, and attend all meetings of creditors, and keep a correct register of all proceedings, and shall wind up the affairs of the insolvent by the sale, in a prudent manner, of all his estate; but in all such respects shall be guided by the direction of the creditors.

The assignee in his own name, as such, may sue for the recovery of all debts due to the insolvent, and may take, both in the prosecution and defence of suits, all the proceedings that the insolvent might have taken with respect to the estate. The assignee may sell the real estate of the insolvent, but only after advertisement thereof, for the same time and in the same manner as is required for the actual advertisement of sales of real estate by the sheriff; but the period of advertisement may be shortened to not less than two

months, by a resolution of the creditors passed at a meeting called for the purpose and approved by the Judge; if the price offered is too small he may withdraw such real estate and sell afterwards. The sale of real estate so made by the assignee shall have the same effect as if made by the sheriff under a writ of execution, but he may grant such term of credit as he may deem expedient, and as is approved of by the creditors, for any part of the purchase money.

Of Dividends.

Two months after the advertisement giving notice of an assignment, or of the appointment of an official assignee, and afterwards from time to time at intervals of not more than six months, the assignee shall prepare and keep constantly accessible to the creditors, accounts and statements of his doing as such assignee, and shall prepare dividends of the estate of the insolvent. The creditors that may grant a discharge to the debtor under this act may allow the insolvent any sum of money or any property they may think proper, which shall be inserted in the dividend sheet. No costs incurred in suits against insolvent after notice of assignment, or of the issue of a writ of attachment, shall be allowed; but all the taxable costs incurred in proceedings against him up to the time shall be added to the demand for the recovery of which such proceedings were instituted, and shall rank upon the estate as if they formed part of the original debt. Clerks and other persons in the employ of the insolvent, in and about his business or trade, shall be collocated in the dividend sheet by special privilege for

any arrears of salary or wages, due and unpaid to them at the execution of deed of assignment, or issue of writ of attachment, not exceeding three months of such arrears.

So soon as a dividend sheet is prepared, notice shall be given by advertisement, and after six days all dividends which have not been objected to shall be paid.

If any balance remains of the estate of the insolvent after payment in full of all debts, it shall be paid over to the insolvent upon his petition to that effect, duly notified to the creditors and granted by the Judge.

Of Appeal.

There shall be an appeal to the Judge from the award of an assignee by petition, of which notice shall be given to the opposite party and to the assignee; and if any parties to such appeal are dissatisfied with such order of the Judge, they may appeal from his judgment to either of the Superior Common Law Courts, or to the Court of Chancery, or to any one of the Judges of the said Courts, first obtaining the allowance of such appeal by a Judge of any of the Courts to which such appeal may be made; but the Judge may order it to be referred on a special case to be settled in the full Court, and on such terms as he may think just. Notice of such appeal shall be given within five days from the day on which judgment of the Judge is recorded, security to be given that he will duly prosecute such appeal.

Of Fraud and Fraudulent Preferences.

All gratuitous contracts or conveyances, or contracts or conveyances without consideration, made by a debtor within three months preceding the date of the assignment, or of the issue of the writ of attachment in compulsory liquidation, and all contracts by which creditors are injured, with a person knowing such inability, are presumed to be made with intent to defraud his creditors; and a contract or conveyance for consideration, by which creditors are injured, made by a debtor unable to meet his engagements with a person ignorant of such inability, and before it has become public, but within thirty days next before the execution of a deed of assignment or of a writ of attachment, is voidable, and may be set aside by any Court of competent jurisdiction; and all fraudulent contracts or conveyances by insolvents are null and void.

Every payment made within thirty days next before the execution of a deed of assignment or the issue of a writ of attachment by a debtor unable to meet his engagements in full to a person knowing such, is void, and the amount paid may be received back by suit. Provided, that if any valuable security be given upon consideration of such payment, such security, or the value thereof, shall be restored to the creditor before the return of such payment can be demanded. Transfer of debts by insolvent to be void in certain cases. Any person who purchases goods on credit or procures advances of money, knowing or believing himself to be unable to meet his engagements, and con-

cealing the facts with intent to defraud such person, or who by any false pretence obtains a term of credit for the payment of any advance or loan of money, or of the price or any part of the price of any goods, with intent to defraud the person becoming his creditor, shall be guilty of a fraud and be liable to imprisonment for such time as the Court may order, not exceeding two years, unless the debt or costs be sooner paid.

Of Composition and Discharge.

A deed of composition and discharge, executed by the majority of creditors who are creditors for the sum of one hundred dollars and upwards, and who represent at least three-fourths in value of the liabilities of the insolvent, shall have the same effect with regard to the remainder of his creditors, and be binding to the same extent upon him and them as if they were also parties to it, and such deed may be validly made either before, pending, or after proceedings upon an assignment.

If the insolvent procures a deed of composition and discharge to be duly executed, and deposits it with the assignee, pending the proceedings upon a voluntary assignment, or for compulsory liquidation, the assignee, after the period fixed as that after which dividends may be declared has elapsed, shall give notice of such deposit by advertisement; and if no opposition is made within six days, the assignee shall act upon such deed of composition according to its terms; if opposition is made thereto, he shall abstain from taking any action upon it. The consent in writing of

the said proportion of creditors to the discharge of a debtor after an assignment absolutely frees and discharges him from all liabilities whatsoever, except certain debts. A discharge shall not apply to any debt enforcing the payment of which imprisonment of the debtor is permitted by this act, nor to any debt as damages for personal wrongs, or as a penalty for any offence of which the insolvent has been convicted, or as the balance of account due by the insolvent, as an assignee, tutor, curator, trustee, executor, or public officer; nor shall such debts, nor any privileged debts, nor the creditor thereof, be computed in ascertaining whether a sufficient proportion of the creditors of the insolvent have done, or consented to, any act, matter or thing under this act, but the creditors may accept the dividend without being affected by any discharge obtained by the insolvent. An insolvent who has procured a consent to his discharge, or the execution of a deed of composition and discharge, may file in the office of the Court the consent or deed of composition and discharge, and may then give notice to the Judge, on a day named in such notice, for a confirmation of the discharge effected thereby, and notice in the Canada Gazette for two months, and in one newspaper for the same period, and upon such meeting any creditor may oppose such confirmation. If the insolvent does not apply to the Court or Judge for a confirmation of such discharge within two months, proceedings may be taken to annul the discharge; the confirmation of such discharge, if not reversed in appeal, shall render the discharge final and conclusive. The insolvent may apply to the Judge by

petition to grant him his discharge after the expiration of one year from date of assignment. Every discharge obtained by fraud shall be null and void.

Examination of Insolvent and Others.

Immediately upon the expiracy of two months from the first insertion of the advertisement giving notice of an assignment or of the appointment of an official assignee, the assignee may call a meeting of the creditors for the examination of the insolvent, and shall summon him to attend such meeting, and the insolvent may be examined on oath, sworn before the assignee, which shall be reduced to writing by the assignee and signed by the insolvent; he may also be examined before the Judge. Any person who is believed to possess information respecting the estate or effects of the insolvent may also be examined before the Judge. Any person who is believed to possess information respecting the estate or effects of the insolvent may also be examined before the Judge to that effect. The insolvent shall also attend all meetings of his creditors when summoned to do so by the assignee. Any person summoned for examination shall be subject to proceedings and punishment similar to which may be taken against or inflicted upon ordinary witnesses, and the Judge may order an allowance of a like amount to that allowed to witnesses in civil cases.

FORM A.

Insolvent Act of 1864.

The creditors of the undersigned are notified to

meet at , in , on , the day of , at o'clock , for the purpose of receiving statements of his affairs, and of naming an assignee to whom he may make an assignment under the above act.

[*Domicile of debtor, and date.*]

[*Signature.*]

(*The following is to be added to the notices sent by post.*)

The creditors holding direct claims and indirect claims maturing before the meeting, for one hundred dollars each and upwards, are as follows [*names of creditors and amount due*]; and the aggregate of claims under one hundred dollars is $.

[*Domicile of debtor, and date.*]

[*Signature.*]

FORM B.

Insolvent Act of 1864.

Schedule of Creditors.

1. Direct liabilities.

Name.	Residence.	Nature of Debt.	Amount.	Total.

2. Indirect liabilities, maturing before the day fixed for the first meeting of creditors.

Name.	Residence.	Nature of Debt.	Amount.	Total.

3. Indirect liabilities, maturing after the day fixed for the first meeting of creditors.

Name.	Residence.	Nature of Debt.	Amount.	Total.

4. Negotiable paper, the holders of which are unknown.

Date.	Name of Maker.	Names liable to Insolvent.	When due.	Amount.	Total.

Insolvent Act of 1864.

Province of Canada, }
County of . }

I, A. B., the above named insolvent, being duly sworn, depose and say:

1. That to the best of my knowledge and belief, and according to my books, the above schedule contains a true and correct list of my liabilities, according to its purport, and that each of such liabilities is correctly classified therein.

2. That all of the above-mentioned liabilities are honestly due by me, and that none of them were created or have been increased with the intention of giving to the creditor thereof any advantage either of voting at meetings of creditors, or in ranking on my estate. And I have signed.

Sworn before me at , this day of , 18 .

FORM C.

Insolvent Act of 1864.

THIS ASSIGNMENT made between , of the first part, and , of the second part, WITNESSES: That under the provisions of the "Insolvent Act of 1864," the said party of the first part, being insolvent, has voluntarily assigned, and hereby does voluntarily assign, to the said party of the second part, accepting thereof as assignee, under the said act, for the pur-

poses therein provided, all his estate and effects, real and personal, of every nature and kind whatsoever.

To HAVE AND TO HOLD, to the party of the second part, as assignee, for the purposes and under the act aforesaid. And a duplicate of the list of creditors exhibited at the first meeting of his creditors, by the said party of the first part is hereto annexed.

IN WITNESS WHEREOF, &c.

CHAPTER XXII.

Statute Labor.

1. For empowering any person, (resident or non-resident) liable to statute labor within the municipality, to compound for such labor, for any term not exceeding five years, at any sum not exceeding one dollar for each day's labor:

2. For providing that a sum of money, not exceeding one dollar for each day's labor, may or shall be paid in commutation of such statute labor:

3. For increasing or reducing the number of days' labor, to which the persons rated on the assessment roll or otherwise shall be liable, in proportion to the statute labor to which such persons are, in respect of the amounts at which they are assessed or otherwise, respectively liable:

4. For enforcing the performance of statute labor, or payment of a commutation in money in lieu thereof, when not otherwise provided by law:

5. For regulating the manner and the divisions in which statute labor or commutation money shall be performed or expended. (*Cons. Statutes, U. C.*)

No person in Her Majesty's naval or military service, on full pay or on actual service, shall be liable to perform statute labor or to commute therefor. (16 *V. c.* 182, *s.* 6, *No.* 8, 78*th section.*) Every other male inhabitant of a city, town, or village, of the age of twenty-one years and upwards, and under sixty years of age (and not otherwise exempted by law from performing statute labor), who has not been assessed upon the assessment rolls of the city, town, or village, or whose taxes do not amount to two dollars, shall, instead of such labor, be taxed at two dollars yearly therefor, to be levied and collected in the same manner as other local taxes. (16 *V. c.* 182, *s.* 35, 79*th section.*)

No such person shall be exempt from the tax in the last preceding section named by reason of his producing a certificate of his having performed statute labor or paid the said tax elsewhere, unless he was actually domiciled out of the limits of the city, town, or village, at the time he so performed statute labor or paid the tax. (16 *V. c.* 182, *s.* 35.)

Every male inhabitant of a township, between the ages aforesaid who is not otherwise assessed to any amount, and who is not exempt by the seventy-eighth section of this act or otherwise, shall be liable to two

days of statute labor on the roads and highways in the township. (16 *V. c.* 182, *s.* 36, 81*st section.*)

Every person assessed upon the assessment roll of a township shall, if his property is assessed at not more than $200, be liable to two days' labor.

At more than	$ 200,	but not more than	$ 400,	to 3	days' labor.
"	400,	"	600,	4	"
"	600,	"	800,	5	"
"	800,	"	1,200,	6	"
"	1,200,	"	1,600,	7	"
"	1,600,	"	2,000,	8	"
"	2,000,	"	2,400,	9	"
"	2,400,	"	3,200,	10	"
"	3,200,	"	4,000,	12	"
And for every 800 above			4,000,	1	"

But the Council of any township, town, or village, by a by-law, operating generally and ratably, may reduce or increase the number of days' labor to which all the parties rated on the assessment roll or otherwise, shall be respectively liable, so that the number of days' labor to which each person is liable shall be in proportion to the amount at which he is assessed. (16 *V. c.* 182, *s.* 36;—22 *V. c.* 99, *s.* 409.)

The Council of any township, town, or village, may by by-law direct that a sum, not exceeding one dollar per day, shall be paid in commutation of statute labor, in which case the commutation tax shall be added in a separate column in the collector's roll, and shall be collected and accounted for like other taxes. (20 *V. c.* 6, *s.* 1,—16 *V. c.* 182, *s.* 36.)

Any local Municipal Council may, by a by-law passed for that purpose, fix the rate at which parties may commute their statute labor at any sum not ex-

ceeding one dollar for each day's labor, and the sum so fixed shall apply to residents, to all persons subject to statute labor, and to non-residents in respect to their property. (20 *V. c.* 6, *s.* 1;—22 *V. c.* 99, *s.* 317.

Where no such by-law has been passed, the statute labor in the townships, against persons in respect of property hereinbefore designated as lands of non-residents, shall be commuted at the rate of fifty cents for each day's labor. (16 *V. c.* 182, *s.* 38.)

If the collector be not able to collect the sum of two dollars, named in the seventy-ninth section, or the tax in lieu of statute labor, named in the eighty-first section, and no sufficient distress to satisfy the sum due can be found, then the head of the municipality or a Justice of the Peace having jurisdiction in the locality, upon complaint showing that the person appears upon the collector's roll to be rated for such sum, that the same has been duly demanded, and that the party has neglected to pay the same, and that no sufficient distress can be found, may issue a warrant under his hand and seal, and commit the party to the common gaol of the county for any time not exceeding six days, unless such sum and the costs of the warrant and of the execution thereof be sooner paid. (16 *V. c.* 182, *s.* 37.)

No non-resident who has not required his name to be entered on the roll, and whose name has not been entered thereon, shall be admitted to perform statute labor in respect of any lands owned by him, but shall, in lieu, be charged with a commutation tax, and the commutation shall be charged against every separate lot or parcel, according to its assessed value.

In case any non-resident, admitted to perform statute labor as a resident, does not perform his statute labor, or pay commutation for the same, the overseer of highways, in whose division he is placed, shall return him as a defaulter to the clerk of the municipality before the first day of September, and the clerk shall in that case enter the commutation for statute labor against his name in the collector's roll, and if at any time before the first day of May then next ensuing, the owner of any non-resident's land which has been returned as such to the treasurer of the county, gives in writing to the treasurer a list of the lands owned by him in the municipality, and tenders to him the taxes in full on such land, and the just commutation money as herein provided, he shall be liable to the commutation for statute labor only upon the aggregate value of all the lands owned by him in each local municipality; but after the first day of May, as aforesaid, no change shall be made in the commutation for statute labor charged against each separate parcel, in consequence of more than one parcel being owned by the same party. (16 *V. c.* 182, *s.* 38.)

CHAPTER XXIII.

Stamp Duties on Promissory Notes, &c.

NOTES, Drafts, or Bills of Exchange executed separately:

Amounting to	$100	3 cts.
For each additional . . .	100	3 cts.
" any fraction of	100	3 cts.

Drafts, or bills of exchange in duplicate:

For	$100	2 cts.
" each additional . . .	100	2 cts.
" any fraction of	100	2 cts.

Drafts, or bills of exchange in more parts than two:

For	$100	1 ct.
" each additional . . .	100	1 ct.
" any fraction of	100	1 ct.

Any of the above documents drawn for less than $100 require no stamp.

Interest made payable at maturity of any bill, &c., shall be counted as part of the principal sum.

The signature or the initials of the maker or drawer, or some integral or material part of the instrument, shall be written upon the stamp.

The stamps for notes, &c., to be affixed by the maker or drawer; and in case of any draft or bill of

exchange drawn out of this Province, by the acceptor or first indorser.

☞ The penalty for not affixing a stamp, or for affixing a stamp of not sufficient value, shall be one hundred dollars; and for using a stamp which has been previously affixed to any other, such person shall be guilty of misdemeanor, and shall incur a penalty of five hundred dollars.

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